



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

**SPOUSES ROBERT ALAN L. and G.R. No. 158622
NANCY LEE LIMSO,**
Petitioners,

-versus-

**PHILIPPINE NATIONAL BANK
and THE REGISTER OF DEEDS OF
DAVAO CITY,**
Respondents.

X-----X X-----X
**DAVAO SUNRISE INVESTMENT G.R. No. 169441
AND DEVELOPMENT
CORPORATION and SPOUSES
ROBERT ALAN and NANCY
LIMSO,**
Petitioners,

-versus-

**HON. JESUS V. QUITAIN, in his
capacity as Presiding Judge of
Regional Trial Court, Davao City,
Branch 15 and PHILIPPINE
NATIONAL BANK,**
Respondents.

X-----X X-----X
**DAVAO SUNRISE INVESTMENT G.R. No. 172958
AND DEVELOPMENT
CORPORATION** represented by its
President **ROBERT ALAN L. LIMSO,**
and **SPOUSES ROBERT ALAN and
NANCY LEE LIMSO,**
Petitioners,

-versus-

**HON. JESUS V. QUITAIN, in his
capacity as Presiding Judge of
Regional Trial Court, Davao City,
Branch 15 and PHILIPPINE
NATIONAL BANK,**

Respondents.

X-----X X-----X
PHILIPPINE NATIONAL BANK, G.R. No. 173194
Petitioner,

-versus-

**DAVAO SUNRISE INVESTMENT
AND DEVELOPMENT
CORPORATION and SPOUSES
ROBERT ALAN LIMSO and
NANCY LEE LIMSO,**

Respondents.

X-----X X-----X
PHILIPPINE NATIONAL BANK, G.R. No. 196958
Petitioner,

-versus-

**DAVAO SUNRISE INVESTMENT
AND DEVELOPMENT
CORPORATION and SPOUSES
ROBERT ALAN L. LIMSO and
NANCY LEE LIMSO,**

Respondents.

X-----X X-----X
DAVAO SUNRISE INVESTMENT G.R. No. 197120
AND DEVELOPMENT
CORPORATION and SPOUSES
ROBERT ALAN AND NANCY LEE
LIMSO,

Petitioners,

-versus-

PHILIPPINE NATIONAL BANK,
Respondent.

X-----X X-----X
IN THE MATTER OF THE G.R. No. 205463
PETITION EX-PARTE FOR THE
ISSUANCE OF THE WRIT OF
POSSESSION UNDER LRC

**RECORD NO. 12973, 18031 AND
LRC RECORD NO. 317, Present:
PHILIPPINE NATIONAL BANK,**

CARPIO, J., Chairperson,
BRION,
PERALTA,*
DEL CASTILLO, and
LEONEN, *JJ.*

Promulgated:

27 JAN 2016

X-----

DECISION

LEONEN, J.:

There is no mutuality of contract when the interest rate in a loan agreement is set at the sole discretion of one party. Nor is there any mutuality when there is no reasonable means by which the other party can determine the applicable interest rate. These types of interest rates stipulated in the loan agreement are null and void. However, the nullity of the stipulated interest rate does not automatically nullify the provision requiring payment of interest. Certainly, it does not nullify the obligation to pay the principal loan obligation.

These consolidated cases arose from three related actions filed before the trial courts of Davao City.

In 1993, Spouses Robert Alan L. Limso and Nancy Lee Limso (Spouses Limso)¹ and Davao Sunrise Investment and Development Corporation (Davao Sunrise) took out a loan secured by real estate mortgages from Philippine National Bank.²

The loan was in the total amount of ₱700 million, divided into two (2) kinds of loan accommodations: a revolving credit line of ₱300 million, and a seven-year long-term loan of ₱400 million.³

To secure the loan, real estate mortgages were constituted on four (4)

* Designated additional member per Raffle dated January 25, 2016.

¹ Spouses Robert Alan L. Limso and Nancy Lee Limso were co-debtors in their personal capacities and as officers of Davao Sunrise Investment and Development Corporation.

² *Rollo* (G.R. No. 158622, Vol. I), p. 284, Amended Petition for Declaratory Relief docketed as Civil Case No. 29,036-2002.

³ *Id.* at 6-7, Petition for Review on Certiorari.

parcels of land registered with the Registry of Deeds of Davao City.⁴ The parcels of land covered by TCT Nos. T-147820, T-151138, and T-147821 were registered in the name of Davao Sunrise, while the parcel of land covered by TCT No. T-140122 was registered in the name of Spouses Limso.⁵

In 1995, Spouses Limso sold the parcel of land covered by TCT No. T-140122 to Davao Sunrise.⁶

Spouses Limso and Davao Sunrise had difficulty in paying their loan. In 1999, they requested that their loan be restructured. After negotiations, Spouses Limso, Davao Sunrise, and Philippine National Bank executed a Conversion, Restructuring and Extension Agreement.⁷

The principal obligation in the restructured agreement totalled ₱1.067 billion. This included ₱217.15 million unpaid interest.⁸

The restructured loan was divided into two (2) parts. Loan I was for the principal amount of ₱583.18 million, while Loan II was for the principal amount of ₱483.78 million.⁹ The restructured loan was secured by the same real estate mortgage over four (4) parcels of land in the original loan agreement. All the properties were registered in the name of Davao Sunrise.¹⁰

The terms of the restructured loan agreement state:

SECTION 1. TERMS OF THE CONVERSION,
RESTRUCTURING AND EXTENSION

1.01 The Conversion/Restructuring/Extension. Upon compliance by the Borrowers with the conditions precedent provided herein, the Obligations shall be converted, restructured and/or its term extended effective January 1, 1999 (the “Effectivity Date”) in the form of term loans (the “Loans”) as follows:

- (a) The Credit Line portion of the Obligations is hereby converted and restructured into a Seven-Year Long Term Loan (the “Loan I”) in the principal amount of ₱583.18 Million;

⁴ Id. at 7, Petition for Review on Certiorari, and 423–446, Transfer Certificates of Title with Memorandum of Encumbrances.

⁵ *Rollo* (G.R. No. 205463), p. 226, Credit Agreement.

⁶ *Rollo* (G.R. No. 158622, Vol. II), p. 133, Conveyance in Payment of Subscription to Increase of Capital Stock of a Corporation.

⁷ *Rollo* (G.R. No. 158622, Vol. I), p. 7.

⁸ *Rollo* (G.R. No. 173194), p. 50, Petition for Review.

⁹ Id.

¹⁰ *Rollo* (G.R. No. 205463), p. 274, Conversion, Restructuring and Extension Agreement.

(b) The original term of the Loan is hereby extended for another four (4) years (from September 1, 2001 to December 31, 2005), and interest portion of the Obligations (including the interest accruing on the Credit Line and Loan up to December 31, 1998 estimated at ₱49.83 Million) are hereby capitalized. Accordingly, both the Loan and Interest portions of the Obligations are hereby consolidated into a Term Loan (the "Loan II") in the aggregate principal amount of ₱483.78 Million;

SECTION 2. TERMS OF LOAN I

2.01 Amount of Loan I. Loan I shall be in the principal amount not exceeding PESOS: FIVE HUNDRED EIGHTY THREE MILLION ONE HUNDRED EIGHTY THOUSAND (₱583,180,000.00).

2.02 Promissory Note. Loan I shall be evidenced by a promissory note (the "Note I") to be issued by the Borrowers in favor of the Bank in form and substance satisfactory to the Bank.

2.03 Principal Repayment. The Borrowers agree to repay Loan I within a period of seven (7) years (inclusive of a one (1) year grace period) in monthly amortizations with the first amortization to commence on January 2000 and a balloon payment on or before the end of the 7th year on December 2005.

2.04 Interest. (a) *The Borrowers agree to pay the Bank interest on Loan I from the Effective Date, until the date of full payment thereof at the rate per annum to be set by the Bank. The interest rate shall be reset by the Bank every month.*

(b) *The interest provided in clause (a) above shall be payable monthly in arrears to commence on January, 1999.*

SECTION 3. TERMS OF LOAN II

3.01 Amount of Loan II. Loan II shall be in the principal amount not exceeding PESOS: FOUR HUNDRED EIGHTY THREE MILLION SEVEN HUNDRED EIGHTY THOUSAND (₱483,780,00.00).

3.02 Promissory Note. Loan II shall be evidenced by a promissory note (the "Note II") to be issued by the Borrowers in favor of the Bank in form and substance satisfactory to the Bank.

3.03 Principal Repayment. The Borrowers agree to repay Loan II within a period of seven (7) years (inclusive of a one (1) year grace period) in monthly amortizations with the first amortization to commence on January 2000 and a balloon payment on or before December 2005.

3.04 Interest. (a) *The Borrowers agree to pay the Bank interest on Loan II from the Effective Date, until the date of full payment thereof at the rate per annum to be set by the Bank. The interest*

rate shall be reset by the Bank every month.

(b) The interest provided in clause (a) above shall be payable monthly in arrears to commence on January 1999.¹¹ (Emphasis provided)

Spouses Limso and Davao Sunrise executed promissory notes, both dated January 5, 1999, in Philippine National Bank's favor. The promissory notes bore the amounts of ₱583,183,333.34 and ₱483,811,798.93.¹² The promissory note for Loan II includes interest charges because one of the preambular clauses of the Conversion, Restructuring and Extension Agreement states that:

WHEREAS, the Borrowers acknowledge that they have outstanding obligations (the "Obligations") with the Bank broken down as follows:

- (i) Credit Line – ₱583.18 Million (as of September 30, 1998);
- (ii) Loan – ₱266.67 Million (as of September 30, 1998);
and
- (iii) Interest – ₱217.15 Million (as of December 31, 1998)[.]¹³

Spouses Limso and Davao Sunrise encountered financial difficulties. Despite the restructuring of their loan, they were still unable to pay.¹⁴ Philippine National Bank sent demand letters. Still, Spouses Limso and Davao Sunrise failed to pay.¹⁵

On August 21, 2000, Philippine National Bank filed a Petition for Extrajudicial Foreclosure of Real Estate Mortgage before the Sheriff's Office in Davao City.¹⁶ The Notice of Foreclosure was published. The bank allegedly complied with all the other legal requirements under Act No. 3135.¹⁷ The auction sale was held on October 26, 2000. Ball Park Realty Corporation, through its representative Samson G. To, submitted its bid in the amount of ₱1,521,045,331.49.¹⁸ Philippine National Bank's bid was in the amount of ₱1,521,055,331.49. Thus, it was declared the highest bidder.¹⁹

¹¹ *Rollo* (G.R. No. 173194), pp. 93–94, Conversion, Restructuring and Extension Agreement.

¹² *Id.* at 51–52, Petition for Review.

¹³ *Id.* at 93, Conversion, Restructuring and Extension Agreement.

¹⁴ *Rollo* (G.R. No. 158622, Vol. I), p. 8.

¹⁵ *Rollo* (G.R. No. 173194), p. 52, Petition for Review.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 209, Court of Appeals Decision in CA G.R. SP No. 63351.

¹⁹ *Id.*

After the foreclosure sale, but before the Sheriff could issue the Provisional Certificate of Sale,²⁰ Spouses Limso and Davao Sunrise filed a Complaint for Reformation or Annulment of contract against Philippine National Bank, Atty. Marilou D. Aldevera, in her capacity as Ex-Officio Provincial Sheriff of Davao City, and the Register of Deeds of Davao City.²¹ The Complaint was filed on October 30, 2000, raffled to Branch 17 of the Regional Trial Court of Davao City, and docketed as Civil Case No. 28,170-2000.²² It prayed for:

[the] declaration of nullity of unilateral imposition and increases of interest rates, crediting of illegal interests collected to [Spouses Limso and Davao Sunrise's] account; elimination of all uncollected illegal interests; reimposition of new interest rates at 12% per annum only from date of filing of Complaint, total elimination of penalties; elimination also of attorney's fees or its reduction; declaration of nullity of auction sale and the foreclosure proceedings; reduction of both loan accounts; reformation or annulment of contract, reconveyance, damages and injunction and restraining order.²³

Immediately after the Complaint was filed, the Executive Judge²⁴ of the Regional Trial Court of Davao City issued a 72-hour restraining order preventing Philippine National Bank from taking possession and selling the foreclosed properties.²⁵

Spouses Limso subsequently filed an amended Complaint.²⁶ The prayer in the amended Complaint stated:

PRAYER

WHEREFORE, it is respectfully prayed that judgment issue in favor of plaintiffs and against the defendants:

ON THE TEMPORARY RESTRAINING ORDER

1. That, upon the filing of the above-entitled case, a TEMPORARY RESTRAINING ORDER be maintained enjoining the defendants from executing the provisional Certificate of Sale and final Deed of Absolute Sale; confirmation of such sale; taking immediate possession thereof and from selling to third parties those properties covered by TCT Nos. T-147820, T-147821, T-246386 and T-247012 and its improvements nor to mortgage or pledge the same prior to the final

²⁰ *Rollo* (G.R. No. 205463), p. 13, Petition for Review on Certiorari.

²¹ *Rollo* (G.R. No. 158622, Vol. I), p. 9.

²² *Id.*

²³ *Id.* at 106, Amended Complaint.

²⁴ *Rollo* (G.R. No. 173194), p. 204, Court of Appeals Decision in CA G.R. SP No. 63351. The Executive Judge at that time was Hon. Virginia Hofileña-Europa.

²⁵ *Rollo* (G.R. No. 158622, Vol. I), p. 241, Regional Trial Court Order in Civil Case No. 28,170-2000.

²⁶ *Id.* at 10, Petition for Review on Certiorari.

outcome of the above-entitled case, including other additional acts of foreclosure;

2. That, plaintiffs' application for the issuance of the [Writ of Preliminary Injunction] be concluded within the 20 days lifetime period of the [Temporary Restraining Order], and

AFTER TRIAL ON THE MERITS

3. To declare the injunction as final;

4. Declaring that the unilateral increases of interest rates imposed by the defendant bank over and above the stipulated interest rates provided for in the Promissory Notes, be also considered as null and void and thereafter lowering the same to 12% per annum only, from the date of the filing of the Complaint;

5. Declaring also that all illegally imposed interest rates and penalty charges be considered eliminated and/or deducted from any account balance of plaintiffs;

6. Declaring also either the complete elimination of attorney's fees, or in the alternative, reducing the same to P500,000.00 only;

7. Declaring the reduction of the loan account balance to P827,012,149.50 only;

8. That subsequent thereto, ordering a complete reformation of the loan agreement and Real Estate Mortgage which will now embody the lawful terms and conditions adjudicated by this Honorable Court, or in the alternative, ordering its annulment, as may be warranted under the provision of Article 1359 of the New Civil Code;

9. Ordering the defendant Register of Deeds to refrain from issuing a new title in favor of third parties, and to execute the necessary documents necessary for the reconveyance of the properties now covered by TCT Nos. T-147820, T-147821, T-246386 and T-247012 from the defendant bank in favor of the plaintiffs upon payment of the recomputed loan accounts;

10. Ordering also the defendant bank to pay to the plaintiffs the sum of at least P500,000.00 representing business losses and loss of income by the later [sic] arising from the improvident and premature institution of extrajudicial foreclosure proceedings against the plaintiffs;

11. Ordering again the defendant bank to pay to the plaintiffs the sum of P400,000.00 as attorney's fees and the additional sum of P100,000.00 for expenses incident to litigation; and

12. To pay the costs and for such other reliefs just and proper under the circumstances.²⁷ (Underscoring in the original)

²⁷ Id. at 10–11.

Through the Order²⁸ dated November 20, 2000, Branch 17 of the Regional Trial Court of Davao City denied Spouses Limso's application for the issuance of a writ of preliminary injunction.²⁹

Spouses Limso moved for reconsideration. On December 4, 2000, Branch 17 of the Regional Trial Court of Davao City set aside its November 20, 2000 Order and issued a writ of preliminary injunction.³⁰

Philippine National Bank then moved for reconsideration of the trial court's December 4, 2000 Order. The bank's Motion was denied on December 21, 2000. Hence, Philippine National Bank filed before the Court of Appeals a Petition for Certiorari assailing the December 4, 2000 and December 21, 2000 Orders of the trial court. This was docketed as CA G.R. SP. No. 63351.³¹

In the meantime, Branch 17 continued with the trial of the Complaint for Reformation or Annulment of Contract with Damages.³²

On January 10, 2002, the Court of Appeals issued the Decision³³ in CA G.R. SP. No. 63351 setting aside and annulling the Orders dated December 4, 2000 and December 21, 2000 and dissolving the writ of preliminary injunction.³⁴

Spouses Limso and Davao Sunrise moved for reconsideration of the Court of Appeals' January 2, 2002 Resolution in CA G.R. SP No. 63351 but the motion was denied.³⁵ They then filed a Petition for Review on Certiorari before this court.³⁶ Their Petition was docketed as G.R. No. 152812, which was denied on procedural grounds.³⁷

²⁸ *Rollo* (G.R. No. 173194), pp. 149–156. The Order was issued by Judge Renato A. Fuentes of Branch 17, Regional Trial Court, Davao City.

²⁹ *Id.* at 156.

³⁰ *Id.* at 164, Regional Trial Court Order in Civil Case No. 28,170-2000. The Order was issued by Judge Renato A. Fuentes of Branch 17, Regional Trial Court, Davao City.

³¹ *Rollo* (G.R. No. 158622, Vol. I), pp. 11–12, Petition for Review on Certiorari.

³² *Id.* at 12.

³³ *Rollo* (G.R. No. 173194), pp. 201–215. The Decision was penned by Associate Justice Salvador J. Valdez, Jr. (Chair) and concurred in by Associate Justices Mercedes Gozo-Dadole and Sergio L. Pestaño of the Fifteenth Division.

³⁴ *Rollo* (G.R. No. 158622, Vol. I), p. 12, Petition for Review on Certiorari.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Rollo* (G.R. No. 173194), p. 216. The Resolution states:

G.R. No. 152812 (*Davao Sunrise Investment and Development Corporation, et al. vs. Court of Appeals, et al.*). – The Court Resolves to DENY the motions of petitioner for second and third extensions totalling thirty (30) days from May 7, 2002 within which to file a petition for review on certiorari:

- (a) considering that the first motion for extension of time to file the petition for review on certiorari was granted with warning; and
- (b) for failing to submit proof of service of the motions (e.g., the affidavits of the party serving) as required under Sec. 13, Rule 13, 1997 Rules of Civil Procedure.

In view of the dissolution of the writ of preliminary injunction, Acting Clerk of Court and Ex-officio Provincial Sheriff Rosemarie T. Cabaguio issued the Sheriff's Provisional Certificate of Sale dated February 4, 2002 in the amount of ₱1,521,055,331.49.³⁸ However, the Sheriff's Provisional Certificate of Sale³⁹ did not state the applicable redemption period and the redemption price payable by the mortgagor or redemptioner.⁴⁰

On the same date, Philippine National Bank presented the Sheriff's Provisional Certificate of Sale to the Register of Deeds of Davao City in order that the title to the foreclosed properties could be consolidated and registered in Philippine National Bank's name. The presentation was recorded in the Primary Entry Book of Davao City's Registry of Deeds under Act No. 496 and entered as Entry Nos. 4762 to 4765.⁴¹

On February 5, 2002, the registration of the Certificate of Sale was elevated en consulta by Atty. Florenda T. Patriarca (Atty. Patriarca), Acting Register of Deeds of Davao City, to the Land Registration Authority in Manila. This was docketed as Consulta No. 3405.⁴²

Acting on the consulta, the Land Registration Authority issued the Resolution dated May 21, 2002, which states:⁴³

“WHEREFORE, in view of the foregoing, the Sheriff's Provisional Certificate of Sale dated February 4, 2002 is registrable on TCT Nos. T-147820, T-147386, T-247012 provided all other registration requirements are complied with.”⁴⁴

Meanwhile, on March 25, 2002, the Spouses Limso filed a Petition for Declaratory Relief with Prayer for Temporary Restraining Order/Injunction on March 25, 2002 against Philippine National Bank, Atty. Rosemarie T. Cabaguio, in her capacity as Ex-Officio Provincial Sheriff, and the Register of Deeds of Davao City (Petition for Declaratory Relief). The Sheriff's Provisional Certificate of Sale allegedly did not state any redemption price and period for redemption. This case was raffled to Branch 14 of the Regional Trial Court of Davao City and docketed as Civil

The Court further Resolves to DENY the petition for review on certiorari of the decision and resolution of the Court of Appeals dated January 10, 2002 and March 15, 2002, respectively, for late filing in view of the denial of the motions for extensions of time to file the same.

³⁸ *Rollo* (G.R. No. 158622, Vol. I), p. 12, Petition for Review on Certiorari; *rollo* (G.R. No. 205463) p. 14, Petition for Review on Certiorari.

³⁹ *Rollo* (G.R. No. 173194), pp. 220–227.

⁴⁰ *Rollo* (G.R. No. 158622, Vol. I), p. 13, Petition for Review on Certiorari.

⁴¹ *Rollo* (G.R. No. 205463), p. 14, Petition for Review on Certiorari.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

Case No. 29,036-2002.⁴⁵

The Petition for Declaratory Relief was filed while the Complaint for Reformation or Annulment with Damages was still pending before Branch 17 of the Regional Trial Court of Davao City.

Spouses Limso subsequently filed an Amended Petition for Declaratory Relief, alleging:

6. That Petitioners with the continuing crisis and the unstable interest rates imposed by respondent PNB admittedly failed to pay their loan, the demand letters were sent to both debtors-mortgagors separately, one addressed to the Petitioners and another addressed to DSIDC, the last of which was dated April 12, 2000 xxx;

7. That on August 21, 200(0), respondent PNB filed a Petition for Extrajudicial Foreclosure of the mortgaged properties against the petitioners-mortgagors-debtors and DSIDC;

8. That on October 26, 2000, the mortgaged properties were auctioned with the respondent PNB as the highest bidder;

9. That on February 4, 2002, a Sheriff's Provisional Certificate of Sale was issued by respondent Sheriff who certified xxxx

10. That the said Sheriff's Provisional Certificate of Sale did not contain a provision usually contained in a regular Sheriff's Provisional Certificate of Sale as regards the period of redemption and the redemption price to be raised within the ONE (1) YEAR redemption period in accordance with Act 3135, under which same law the extrajudicial petition for sale was conducted as mentioned in the Certificate;

11. That the Sheriff's Provisional Certificate of Sale has not yet been registered with the office of respondent Register of Deeds yet; that petitioners and DSIDC are still in actual possession of the subject properties;

12. That sometime in the middle part of year 2000, Republic Act No. 8791 otherwise known as General Banking Laws of 2000 was approved and finally passed on April 12, 2000 and took effect sometime thereafter;

13. That among the provisions of the said law particularly, Section 47 dealt with Foreclosure of Real Estate Mortgage, quoted verbatim hereunder as follows:

“Sec. 47. Foreclosure of Real Estate Mortgage. - In the event of foreclosure, whether judicially or extra-judicially, or any mortgage on real estate which is security for any loan or other credit accommodation granted, the

⁴⁵ *Rollo* (G.R. No. 158622, Vol. I), p. 13, Petition for Review on Certiorari.

mortgagor or debtor whose real property has been sold for the full or partial payment of his obligation shall have the right within one year after the sale of the real estate, to redeem the property by paying the amount due under the mortgage deed, with interest thereon at rate specified in the mortgage, and all the costs and expenses incurred by the bank or institution from the sale and custody of said property less the income derived therefrom. However, the purchaser at the auction sale concerned whether in a judicial or extra-judicial foreclosure shall have the right to enter upon and take possession of such property immediately after the date of the confirmation of the auction sale and administer the same in accordance with law. Any petition in court to enjoin or restrain the conduct of foreclosure proceedings instituted pursuant to this provision shall be given due course only upon the filing by the petitioner of a bond in an amount fixed by the court conditioned that he will pay all the damages which the bank may suffer by the enjoining or the restraint of the foreclosure proceeding.

Notwithstanding Act 3135, juridical persons whose property is being sold pursuant to an extrajudicial foreclosure, shall have the right to redeem the property in accordance with this provision until, but not after, the registration of the certificate of foreclosure sale with the applicable Register of Deeds which in no case shall be more than three (3) months after foreclosure, whichever is earlier. Owners of property that has been sold in a foreclosure sale prior to the effectivity of this Act shall retain their redemption rights until their expiration.”

14. That it is clear and evident that the absence of provisions as to redemption period and price in the Sheriff’s Provisional Certificate of Sale issued by respondent Sheriff, that respondent PNB and Sheriff intended to apply the provisions of Section 47 of Republic Act No. 8791 which reduced the period of redemption of a juridical person whose property is being sold pursuant to an extrajudicial foreclosure sale until but not after the registration of the Certificate of Sale with the applicable Register of Deeds which in no case shall be more than three (3) months after foreclosure, whichever is earlier;

15. That Petitioners in this subject mortgage are Natural Persons who are principal mortgagors-debtors and at the same time registered owners of some properties at the time of the mortgage;

16. That the provisions of Republic Act No. 8791 do not make mention nor exceptions to this situation where the Real Estate Mortgage is executed by both Juridical and Natural Persons; hence, the need to file this instant case of Declaratory Relief under Rule 63 of the Revised Rules of Court of the Philippines;

....

PRAYER

WHEREFORE, it is respectfully prayed that judgment in favor of petitioners and against the respondent-PNB;

1. That upon the filing of the above-entitled case, a TEMPORARY RESTRAINING INJUNCTION be issued immediately ordering a status quo, enjoining the Register of Deeds and defendant-PNB from registering the subject Provisional Certificate of Sale from consolidating the title of the property covered by Transfer Certificate of Title Nos. T-147820, T-147821, T-246386, T-24712 and Land Improvement, Etc.

2. That petitioners' application of the issuance of the Writ of Preliminary Injunctions be considered and granted within 20 days lifetime period of the TRO.

AFTER TRIAL ON THE MERITS

3. To declare the injunction as final;

4. Ordering the Register of Deeds to refrain from registering the Sheriff's Certificate of Sale and further from consolidating the titles of the said properties in its name and offering to sell the same to interested buyers during the pendency of the above entitled case, while setting the date of hearing on the propriety of the issuance of such Writ of Preliminary Injunction.

ON THE MAIN CASE

5. To declare the petitioners' right as principal mortgagors/owner jointly with a juridical person to redeem within a period of 1 year the properties foreclosed by respondent PNB still protected and covered by Act 3135.

6. To declare the provisions on Foreclosure of Real Estate Mortgage under Republic Act 8791 or General Banking Laws of 2000 discriminating and therefore unconstitutional.

OTHER RELIEFS AND REMEDIES are likewise prayed for.⁴⁶

Branch 14 of the Regional Trial Court of Davao City issued a temporary restraining order⁴⁷ on April 10, 2002. This temporary restraining order enjoined the Register of Deeds from registering the Sheriff's Provisional Certificate of Sale.⁴⁸

The temporary restraining order was issued without first hearing the parties to the case. Hence, the temporary restraining order was recalled by the same trial court in the Order⁴⁹ dated April 16, 2002.

⁴⁶ Id. at 13–17.

⁴⁷ Id. at 295–296. The temporary restraining order was issued by Presiding Judge William M. Layague of Branch 14, Regional Trial Court, Davao City.

⁴⁸ Id. at 17, Petition for Review on Certiorari.

⁴⁹ Id. at 297, Regional Trial Court Order in SP. Civil Case No. 29,036-2002. The Order states:

During the hearing for the issuance of a temporary restraining order in the Petition for Declaratory Relief, Spouses Limso presented several exhibits, which included: Philippine National Bank's demand letter dated April 12, 2000; Philippine National Bank's letter to the Acting Register of Deeds of Davao City dated February 4, 2002 requesting the immediate registration of the Sheriff's Provisional Certificate of Sale; and the Notice of Foreclosure dated September 5, 2000.⁵⁰

Counsel for Philippine National Bank objected to the purpose of the presentation of the exhibits and argued that since Spouses Limso were Davao Sunrise's co-debtors, they "were notified as a matter of formality[.]"⁵¹

On May 3, 2002, Branch 14 granted the prayer for the issuance of the writ of preliminary injunction enjoining the registration of the Sheriff's Provisional Certificate of Sale.⁵²

Branch 14 reasoned as follows:

This Court finds no merit in the claims advanced by private respondent Bank for the following reasons:

1. That the primary ground why the Court of Appeals dissolved the preliminary injunction granted by Branch 17 of this Court was because the ground upon which the same was issued was based on a pleading which was not verified;

2. That Civil Case No. 28,170-2000 and Civil Case No. 29,036-2002 while involving substantially the same parties, the same do not involved [sic] the same issues as the former involves nullity of unilateral imposition and increases of interest rates, etc. nullity of foreclosure proceedings, reduction of both loan accounts, reformation or annulment of contract, reconveyance and damages, whereas the issues raised in the instant petition before this Court is the right and duty of the petitioners under the last paragraph of Sec. 47, Republic Act No. 8791 and whether the said section of said law is applicable to the petitioners considering that the mortgage contract was executed when Act No. 3135 was the controlling law and was in fact made part of the contract;

3. That the petition, contrary to the claim of private respondent

"Considering that under Par. (d), Section 4 of the 1997 Rules of Civil Procedure which is based on Administrative Circular No. 20-95 as interpreted by the Supreme Court in A.M. No. MTJ-00-1250, February 28, 2001, the application for a Temporary Restraining Order can be acted upon only after all parties are heard in a summary hearing which shall be conducted within twenty-four (24) hours after the Sheriff's Return of Service, the Temporary Restraining Order issued by this Court dated April 10, 2002 pursuant to the first paragraph of Section 5 of the same Rules of Civil Procedure is hereby RECALLED and set aside."

⁵⁰ Id. at 17-18, Petition for Review on Certiorari.

⁵¹ Id. at 18.

⁵² Id. at 142, Regional Trial Court Order in SP. Civil Case No. 29,036-2002.

Bank, clearly states a cause of action; and

4. That since petitioners are parties to the mortgage contract they, therefore, have locus standi to file the instant petition.

If Section 7 of Republic Act 8791 were made to apply to the petitioners, the latter would have a shorter period of three (3) months to exercise the right of redemption after the registration of the Certificate of Sale, hence, the registration of the Sheriff's Provisional Certificate of Sale would cause great and irreparable injury to them as their rights to the properties sold at public auction would be lost forever if the registration of the same is not enjoined.⁵³

Spouses Limso posted an injunction bond that was approved by the trial court in the Order dated May 6, 2002. Thus, the writ of preliminary prohibitory injunction was issued.⁵⁴

Philippine National Bank moved for reconsideration of the Orders dated May 3, 2002 and May 6, 2002.⁵⁵

Around this time, Judge William M. Layague (Judge Layague), Presiding Judge of Branch 14, was on leave.⁵⁶ Philippine National Bank's Motion for Reconsideration was granted by the Pairing Judge, Judge Jesus V. Quitain (Judge Quitain),⁵⁷ and the writ of preliminary prohibitory injunction was dissolved in the Order dated May 23, 2002.⁵⁸

On May 30, 2002, Philippine National Bank's lawyers went to the Register of Deeds of Davao City "to inquire on the status of the registration of the Sheriff's Provisional Certificate of Sale."⁵⁹

Philippine National Bank's lawyers were informed that the documents they needed "could not be found and that the person in charge thereof, Deputy Register of Deeds Jorlyn Paralisan, was absent."⁶⁰

Philippine National Bank contacted Jorlyn Paralisan at her residence. She informed Philippine National Bank that the documents they were looking for were all inside Atty. Patriarca's office.⁶¹

⁵³ Id. at 141–142.

⁵⁴ Id. at 20, Petition for Review on Certiorari.

⁵⁵ Id.

⁵⁶ *Rollo* (G.R. No. 169441), p. 11, Petition for Review.

⁵⁷ Id.

⁵⁸ *Rollo* (G.R. No. 158622, Vol. I), p. 20, Petition for Review on Certiorari.

⁵⁹ *Rollo* (G.R. No. 205463), p. 15, Petition for Review on Certiorari.

⁶⁰ Id.

⁶¹ Id.

Subsequently, Atty. Patriarca informed the representatives of Philippine National Bank that the Register of Deeds “would not honor certified copies of [Land Registration Authority] resolutions even if an official copy of the [Land Registration Authority] Resolution was already received by that Office through mail.”⁶²

On May 31, 2002, Philippine National Bank’s representatives returned to the Register of Deeds of Davao City and learned that Atty. Patriarca, the Acting Register of Deeds, had not affixed her signature, which was necessary to complete the registration of the Sheriff’s Certificate of Sale.⁶³

Subsequently, Judge Layague reinstated the writ of preliminary prohibitory injunction in the Order⁶⁴ dated June 24, 2002.

Aggrieved, Philippine National Bank filed before the Court of Appeals a Petition for Certiorari, Prohibition and Mandamus with Prayer for Temporary Restraining Order and Writ of Preliminary Injunction, both Prohibitory and Mandatory, docketed as CA G.R. SP No. 71527. The Petition assailed the June 24, 2002 Order of Branch 14 of the Regional Trial Court, which reinstated the writ of preliminary prohibitory injunction.⁶⁵

On July 3, 2002, Philippine National Bank inspected the titles and found that correction fluid had been applied over Atty. Patriarca’s signature on the titles.⁶⁶

Also on July 3, 2002, Philippine National Bank filed before the Regional Trial Court of Davao City a Petition for Issuance of the Writ of Possession under Act No. 3135, as amended, and Section 47 of Republic Act No. 8791.⁶⁷ This was docketed as Other Case No. 124-2002 and raffled to Branch 15 of the Regional Trial Court of Davao City, presided by Judge Quitain.⁶⁸

Davao Sunrise filed a Motion to Expunge and/or Dismiss Petition for Issuance of Writ of Possession dated July 12, 2002.⁶⁹ In the Motion to

⁶² Id.

⁶³ Id.

⁶⁴ *Rollo* (G.R. No. 158622, Vol. I), pp. 144–150, Regional Trial Court Order in SP. Civil Case No. 29,036-2002.

⁶⁵ Id. at 21–22, Petition for Review on Certiorari. CA G.R. SP No. 71527 was brought up to this court under Rule 45 and was docketed as G.R. No. 158622 (Id. at 3).

⁶⁶ *Rollo* (G.R. No. 205463), p. 16, Petition for Review on Certiorari.

⁶⁷ Id. at 10 and 16. The Petition for Issuance of the Writ of Possession is entitled *In the Matter of the Petition Ex-Parte for the Issuance of Writ of Possession under L.R.C. Record No. 12973; 18031; and LRC Cadastral Record No. 317, Philippine National Bank*.

⁶⁸ *Rollo* (G.R. No. 169441), p. 16, Petition for Review.

⁶⁹ Id. at 17.

Expunge, Davao Sunrise pointed out that Branch 14⁷⁰ (in the Petition for Declaratory Relief docketed as Civil Case No. 29,036-2002) issued a writ of preliminary injunction “enjoining the Provincial Sheriff, the Register of Deeds of Davao City[,] and [Philippine National Bank] from registering the Sheriff’s Provisional Certificate of Sale and, if registered, enjoining [Philippine National Bank] to refrain from consolidating the title of the said property in its name and/or offering to sell the same to interested buyers during the pendency of the case.”⁷¹

On July 18, 2002, Spouses Limso filed a Motion to Intervene⁷² in Other Case No. 124-2002.⁷³

In the Resolution dated August 13, 2002, the Court of Appeals granted the temporary restraining order prayed for by Philippine National Bank (in CA G.R. SP No. 71527) enjoining the implementation of Judge Layague’s Orders dated May 3, 2002 and June 24, 2002. These Orders pertained to the writ of preliminary injunction enjoining the registration of the Sheriff’s Provisional Certificate of Sale.⁷⁴

Spouses Limso filed a Motion for Reconsideration with Prayers for the Dissolution of Temporary Restraining Order and to Post Counter Bond.⁷⁵

The Court of Appeals granted Philippine National Bank’s Petition for Certiorari in the Decision⁷⁶ dated December 11, 2002. The dispositive portion of the Decision states:

WHEREFORE, premises considered, the writ prayed for in the herein petition is GRANTED and the assailed Orders of respondent judge dated May 3 and June 24, 2002 granting the writ of preliminary injunction are SET ASIDE. Civil Case No. 29,036-2002 is hereby ordered DISMISSED and respondent Register of Deeds of Davao City is hereby ordered to register petitioner PNB’s Sheriff’s Provisional Certificate of Sale and cause its annotation on TCT Nos. T-147820, T-147821, T-246386 and T-247012.⁷⁷

Spouses Limso filed a Motion to Reconsider Decision and To Call

⁷⁰ The Petition docketed as G.R. No. 169441 states Branch 17, but it may be deemed a typographical error as Civil Case No. 29,036-2002 was raffled to Branch 14 of the Regional Trial Court of Davao City.

⁷¹ *Rollo* (G.R. No. 169441), pp. 17–18, Petition for Review.

⁷² *Rollo* (G.R. No. 169441), pp. 752–756.

⁷³ *Rollo* (G.R. No. 169441), p. 18, Petition for Review; *rollo* (G.R. No. 205463), p. 112, Omnibus Motion for Leave to Intervene; to File/Admit herein attached Comment-in-Intervention; and to Consolidate Cases, and 128, Regional Trial Court Order in Other Case No. 124-2002.

⁷⁴ *Rollo* (G.R. No. 158622, Vol. I), p. 22, Petition for Review on Certiorari.

⁷⁵ *Id.* at 22–23.

⁷⁶ *Id.* at 75–95. The Decision was penned by Associate Justice Eubulo G. Verzola (Chair) and concurred in by Associate Justices Eugenio S. Labitoria and Candido V. Rivera of the Special Third Division.

⁷⁷ *Id.* at 29, Petition for Review on Certiorari.

Case For Hearing on Oral Argument, which was opposed by Philippine National Bank.⁷⁸ Oral arguments were conducted on March 19, 2003.⁷⁹

On June 10, 2003, the Court of Appeals denied Spouses Limso's Motion for Reconsideration.⁸⁰

Spouses Limso then filed a Petition for Review on Certiorari⁸¹ before this court, questioning the Decision in CA G.R. SP No. 71527, which ordered the Register of Deeds to register the Sheriff's Provisional Certificate of Sale. This was docketed as G.R. No. 158622.⁸²

With regard to the Complaint for Reformation or Annulment of Contract with Damages, Branch 17 of the Regional Trial Court of Davao City promulgated its Decision⁸³ on June 19, 2002.

Branch 17 ruled in favor of Spouses Limso and Davao Sunrise. It found the interest rate provisions in the loan agreement to be unreasonable and unjust because the imposable interest rates were to be solely determined by Philippine National Bank. The arbitrary imposition of interest rates also had the effect of increasing the total loan obligation of Spouses Limso and Davao Sunrise to an amount that would be beyond their capacity to pay.⁸⁴

The dispositive portion of the Decision in the Complaint for Reformation or Annulment with Damages states:

WHEREFORE, finding the evidence of plaintiffs corporation through counsel, more than sufficient, to constitute a preponderance to prove the various unilateral impositions of increased interest rates by defendant bank, such usurious, unreasonable, arbitrary, unilateral imposition of interest rates, are declared, null and void.

Accordingly, decision is issued in favor of the defendant bank, in a reduced amount based on the following:

1. The amount of One Hundred Twenty Seven Million, One Hundred Fifty Thousand (P127,150,000.00) Pesos, representing illegal interest rate, the amount of One Hundred Seventy Six Million, Ninety Eight Thousand, Forty Five and 95/100 (P176,098,045.95) Pesos, representing illegal penalty charges and the amount of One

⁷⁸ Id.

⁷⁹ Id.

⁸⁰ Id. at 105, Court of Appeals Resolution in CA G.R. SP No. 71527. The Resolution was penned by Associate Justice Eugenio S. Labitoria (Chair) and concurred in by Associate Justices Andres B. Reyes, Jr. and Regalado E. Maambong of the Fifth Division.

⁸¹ Id. at 3–71.

⁸² Id. at 3.

⁸³ Id. at 787–804. The Decision was penned by Presiding Judge Renato A. Fuentes of Branch 17, Regional Trial Court, Davao City.

⁸⁴ Id. at 791–803.

Hundred Thirty Six Million, Nine Hundred Thousand, Nine Hundred Twenty Eight and 85/100 (P136,900,928.85) Pesos, as unreasonable 10% Attorney's fees or in the total amount of Four Hundred Forty Million, One Hundred Forty Eight Thousand, Nine Hundred Seventy Four and 79/100 (P440,148,974.79) Pesos, are declared null and void, rescinding [sic] and/or altering the loan agreement of parties, on the ground of fraud, collusion, mutual mistake, breach of trust, misconduct, resulting to gross inadequacy of consideration, in favor of plaintiffs corporation, whose total reduced and remaining principal loan obligation with defendant bank, shall only be the amount of Eight Hundred Eighty Two Million, Twelve Thousand, One Hundred Forty Nine and 50/100 (P882,012,149.50) Pesos, as outstanding remaining loan obligation of plaintiffs corporation, with defendant bank, to be deducted from the total payments so far paid by plaintiffs corporation with defendant bank as already stated in this decision.

2. That thereafter, the above-amount as ordered reduced, shall earn an interest of 12% per annum, the lawful rate of interest that should legitimately be imposed by defendant bank to the outstanding remaining reduced principal loan obligation of plaintiffs corporation.
3. Notwithstanding, defendant bank, is entitled to a reduced Attorney's fees of Five Hundred Thousand (P500,000.00) Pesos, as a reasonable Attorney's fees, subject to subsequent pronouncement as to the real status of defendant bank, on whether or not, said institution is now a private agency or still a government instrumentality in its capacity to be entitled or not of the said Attorney's fees.
4. The prayer of defendant bank for award of moral damages and exemplary damages, are denied, for lack of factual and legal basis.

SO ORDERED.⁸⁵ (Emphasis in the original)

Philippine National Bank moved for reconsideration of the Decision, while Spouses Limso and Davao Sunrise filed a Motion for partial clarification of the Decision.⁸⁶

Branch 17 of the Regional Trial Court of Davao City subsequently issued the Order⁸⁷ dated August 13, 2002 clarifying the correct amount of Spouses Limso and Davao Sunrise's obligation, thus:

WHEREFORE, finding the motion for reconsideration of defendant bank through counsel, to the decision of the court, grossly bereft of merit, merely a reiteration and rehash of the arguments already set forth

⁸⁵ Id. at 803–804.

⁸⁶ Id. at 805, Regional Trial Court Order in Civil Case No. 28,170-2000.

⁸⁷ *Rollo* (G.R. No. 158622, Vol. I), pp. 805–810. The Order was issued by Presiding Judge Renato A. Fuentes of Branch 17, Regional Trial Court, Davao City.

during the hearing, including therein matters not proved during the trial on the merits, and considered admitted, is denied.

To provide a clarification of the decision of this court, relative to plaintiffs motion for partial clarification with comment of defendant bank through counsel, the correct remaining balance of plaintiffs account with defendant bank, pursuant to the decision of this court, in pages 17 and 18, dated June 19, 2002, is Two Hundred Five Million Eighty Four Thousand Six Hundred Eighty Two Pesos & 61/100 (P205,084,682.61), as above-clarified.

SO ORDERED.⁸⁸

Philippine National Bank appealed the Decision and Order in the Complaint for Reconstruction or Annulment with Damages by filing a Notice of Appeal on August 16, 2002.⁸⁹ The Notice of Appeal was approved by the trial court in the Order dated September 25, 2002.⁹⁰ The appeal was docketed as CA-G.R. CV No. 79732.⁹¹

On August 20, 2002,⁹² Spouses Limso and Davao Sunrise filed, in Other Case No. 124-2002 (Petition for Issuance of Writ of Possession), a Motion to Inhibit the Presiding Judge (referring to Judge Quitain, before whom the Petition for Issuance of Writ of Possession was pending) because his wife, Gladys Isla Quitain, was a long-time Philippine National Bank employee who had retired.⁹³ Spouses Limso and Davao Sunrise also heard rumors that Gladys Isla Quitain had been serving as consultant for Philippine National Bank even after retirement.⁹⁴ Davao Sunrise also filed a Motion to Expunge and/or Dismiss Petition and argued that the person who signed for Philippine National Bank was not authorized because no Board Resolution was attached to the Verification and Certification against Forum Shopping.

In the Order⁹⁵ dated March 21, 2003, Judge Quitain denied three motions:

- (1) The Motion to Intervene filed by Spouses Robert Alan Limso and Nancy Limso;
- (2) The Motion to Expunge and/or Dismiss Petition for the Issuance of Writ of Possession filed by Davao Sunrise Investment and Development Corporation; and

⁸⁸ Id. at 810.

⁸⁹ *Rollo* (G.R. No. 196958), p. 21, Petition for Review.

⁹⁰ Id.

⁹¹ *Rollo* (G.R. No. 169441), p. 16, Petition for Review.

⁹² The Petition in G.R. No. 169441 states August 20, 2003, but it may be deemed a typographical error. Based on the allegations in the Petition, the proper date would be August 20, 2002.

⁹³ *Rollo* (G.R. No. 169441), p. 18, Petition for Review.

⁹⁴ Id.

⁹⁵ Id. at 824-826.

(3) The Motion for Voluntary Inhibition filed by Davao Sunrise Investment and Development Corporation.⁹⁶

Judge Quitain denied the Motion to Inhibit on the ground that the allegations against him were mere suspicions and conjectures.⁹⁷ The Motion to Intervene was denied on the ground that Spouses Limso have no interest in the case, not being the owners of the property.⁹⁸

The Motion to Expunge and/or Dismiss filed by Davao Sunrise was also denied for lack of merit. Judge Quitain ruled that “PNB Vice President Leopoldo is clearly clothed with authority to represent and sign in behalf of the petitioner [referring to Philippine National Bank] as shown by the Verification and Certification of the said petition as well as the Secretary’s Certificate.”⁹⁹

Spouses Limso and Davao Sunrise filed a Motion for Reconsideration¹⁰⁰ of the Order dated March 21, 2003. Judge Quitain denied the Motion for Reconsideration in an Order dated September 1, 2003, only with regard to the Motion to Intervene and Motion for Voluntary Inhibition. The Motion to Expunge and/or Dismiss was not mentioned in the September 1, 2003 Order.¹⁰¹

Spouses Limso and Davao Sunrise questioned the denial of the Motion for Inhibition by filing a Petition for Certiorari before the Court of Appeals on September 26, 2003. This was docketed as CA G.R. SP No. 79500.¹⁰² Spouses Limso and Davao Sunrise subsequently filed a Supplemental Petition for Certiorari before the Court of Appeals on October 3, 2003.¹⁰³

In the meantime, Other Case No. 124-2002 (Petition for Issuance of Writ of Possession) was set for an ex-parte hearing on October 10, 2003.¹⁰⁴

However, on October 8, 2003, the Court of Appeals granted the prayer for the issuance of a temporary restraining order in CA G.R. SP No. 79500 “enjoining public respondent Judge Quitain from proceeding with Other Case No. 124-2002 for a period of sixty (60) days from receipt by

⁹⁶ Id. at 824-825.

⁹⁷ Id. at 20, Petition for Review. The Order states: “There is no basis for the Presiding Judge to inhibit himself considering that the allegation of bias and partiality is based merely on suspicion and conjecture.”

⁹⁸ Id. at 824-825.

⁹⁹ Id. at 825.

¹⁰⁰ Id. at 827-852.

¹⁰¹ Id. at 827-852.

¹⁰² Id. at 22.

¹⁰³ Id.

¹⁰⁴ Id.

respondents thereof.”¹⁰⁵

The temporary restraining order was effective from October 10, 2003 to December 9, 2003.¹⁰⁶

On December 12, 2003, Judge Quitain issued the Order allowing Philippine National Bank to present evidence ex-parte on December 18, 2003 despite the pendency of other incidents to be resolved.¹⁰⁷

Spouses Limso and Davao Sunrise filed an Urgent Motion for Cancellation of the December 18, 2003 hearing due to the pendency of CA G.R. SP No. 79500.¹⁰⁸

Judge Quitain reset the hearing for Other Case No. 124-2002 to January 23, 2004. The hearing was subsequently reset to January 30, 2004. In the January 30, 2004 hearing, Judge Quitain heard the arguments of parties regarding the Urgent Motion to Cancel Hearing.¹⁰⁹

In the Order dated March 12, 2004, Judge Quitain “resolved the pending Urgent Motion to Cancel Hearing and [Davao Sunrise’s] Motion to Re-schedule Newly Scheduled Hearing Date.”¹¹⁰

The March 12, 2004 Order also stated that “the Spouses Limso have no right to intervene because they are no longer owners of the subject foreclosed property.”¹¹¹

Spouses Limso treated the March 12, 2004 Order as a denial of their Motion for Reconsideration regarding their Motion to Intervene. Thus, they, together with Davao Sunrise, filed a Petition for Certiorari before the Court of Appeals, which was docketed as CA G.R. SP No. 84279.¹¹²

CA G.R. SP No. 84279 was denied by the Court of Appeals in the Decision¹¹³ dated September 20, 2004.

¹⁰⁵ Id. at 23.

¹⁰⁶ Id.

¹⁰⁷ Id.

¹⁰⁸ Id.

¹⁰⁹ Id. at 24.

¹¹⁰ Id.

¹¹¹ Id. at 25.

¹¹² Id.

¹¹³ Id. at 1129–1162. The Decision was penned by Associate Justice Teresita Dy-Liacco Flores (Chair) and concurred in by Associate Justices Romulo V. Borja and Rodrigo F. Lim, Jr. of the Twenty-Third Division.

Spouses Limso and Davao Sunrise filed a Motion for Reconsideration¹¹⁴ dated September 13, 2004, which was denied in the Resolution¹¹⁵ dated July 8, 2005.

Spouses Limso and Davao Sunrise then filed a Petition for Review on Certiorari dated July 26, 2005 before this court. This was docketed as G.R. No. 168947.¹¹⁶

Despite the pendency of Spouses Limso and Davao Sunrise's Motion for Reconsideration of the Order denying Davao Sunrise's Motion to Expunge and/or Dismiss, Philippine National Bank filed a Motion for Reception of Evidence and/or Resume Hearing dated March 30, 2004 in Other Case No. 124-2002.¹¹⁷

Judge Quitain granted the Motion "and set the hearing for reception of petitioner's evidence on 06 April 2004 at 2:00 p.m."¹¹⁸

Spouses Limso and Davao Sunrise filed an Extremely Urgent Manifestation and Motion dated April 5, 2004. They prayed for the cancellation of the hearing for the reason that the March 12, 2004 Order was not yet final and that Davao Sunrise had a pending Motion for Reconsideration of the Order denying its Motion to Expunge and/or Dismiss.¹¹⁹

Judge Quitain cancelled the April 6, 2004 hearing due to the Manifestation and Motion filed by Spouses Limso and Davao Sunrise.¹²⁰

Spouses Limso filed a Motion for Reconsideration of the March 12, 2004 Order because it addressed issues other than those raised in the Motion for Intervention.¹²¹

On April 20, 2004, Judge Quitain issued the Order and reset the case for hearing to May 7, 2004, even though the Motion for Reconsideration of the Order denying the Motion to Expunge and/or Dismiss had not been acted

¹¹⁴ Id. at 1163–1193.

¹¹⁵ Id. at 1197. The Resolution was penned by Associate Justice Teresita Dy-Liacco Flores (Chair) and concurred in by Associate Justices Romulo V. Borja and Rodrigo F. Lim, Jr. of the Former Twenty-Third Division.

¹¹⁶ Id. at 26, Petition for Review. Upon checking with the Judgment Division, G.R. No. 168947 was dismissed on August 17, 2005 for failure to show reversible error on the part of the Court of Appeals. Entry of Judgment was made on April 27, 2006.

¹¹⁷ Id.

¹¹⁸ Id.

¹¹⁹ Id.

¹²⁰ Id. at 27.

¹²¹ Id.

upon.¹²²

During the May 7, 2004 hearing, counsel for Spouses Limso and Davao Sunrise pointed out to Judge Quitain the pendency of the Motion for Reconsideration of the Order denying the Motion to Expunge and/or Dismiss.¹²³

Judge Quitain issued the Order dated July 5, 2004 denying Spouses Limso and Davao Sunrise's Motion for Reconsideration to the March 12, 2004 Order (referring to the denial of Spouses Limso's Motion to Intervene). Judge Quitain also set hearing dates on August 4 and 5, 2004 for the reception of Philippine National Bank's evidence. Once again, the hearings were scheduled even though the Motion to Expunge and/or Dismiss had yet to be resolved.¹²⁴

Davao Sunrise then filed a Motion to Transfer Case or in the Alternative to Dismiss the Same on July 30, 2004. Davao Sunrise reiterated the arguments in its Motion to Expunge and/or Dismiss.¹²⁵

Subsequently, Spouses Limso and Davao Sunrise filed an Extremely Urgent Manifestation and Motion dated August 3, 2004 asking that the hearings scheduled for August 4 and 5, 2004 be cancelled, considering that Davao Sunrise's Motion to Dismiss/Expunge the Petition was still unresolved.¹²⁶

On August 4, 2004, Judge Quitain took cognizance of the Extremely Urgent Manifestation and Motion dated August 3, 2004 and a Very Urgent Motion for Intervention filed by a third party. Thus, Judge Quitain cancelled the hearings scheduled on August 4 and 5, 2004, reset the hearing to August 11, 2004, and "impressed upon the parties that he would be able to resolve all pending incidents by that time."¹²⁷

Spouses Limso and Davao Sunrise alleged that the pending incidents were hastily acted upon by Judge Quitain, as follows:

[O]n 11 August 2004, at around 11:45 a.m., petitioners' counsel was furnished a copy of public respondent's *Order* allegedly dated 06 August 2004 which declared as submitted for resolution the following incidents, to wit: (a) petitioner DSIDC's Motion to Transfer the Case to Branch 17; (b) Petitioner DSIDC's *Motion to*

¹²² Id.

¹²³ Id.

¹²⁴ Id. at 27–28.

¹²⁵ Id. at 28.

¹²⁶ Id.

¹²⁷ Id. at 28–29.

Postpone Hearing; (c) Motion for Intervention filed by a certain Karlan Lou Ong; (d) petitioners' (DSIDC and Spouses Limso) *Extremely Urgent Manifestation and Motion*; and (e) Petitioner DSIDC's *Manifestation*.

. . . And then, at around 2:10 p.m. of the same day, 11 August 2004, when petitioners' counsel was already in court for the said hearing, he was furnished by a staff of public respondent Judge Quitain a copy of an *Order* dated 11 August 2004 and consisting of two (2) pages, the dispositive portion of which reads as follows:

“WHEREFOREM(sic), the Court hereby resolves the following motions: 1) DSIDC's motion to transfer case to Branch 17 or dismiss the same is denied for lack of merit. 2) DSIDC's (sic) motion to postpone the hearing is denied for lack of merit. 3) The motion of Karla Ong to intervene is denied for lack of merit. 4) The August 5 manifestation of DSIDC is noted.”¹²⁸ (Emphasis in the original)

Spouses Limso and Davao Sunrise also claimed that the *Order* dated August 11, 2004 was done hastily so that Philippine National Bank would be able to present its evidence without objection.¹²⁹

Spouses Limso and Davao Sunrise alleged that the August 11, 2004 *Order* contained factual findings not supported by the record. When counsel for Spouses Limso and Davao Sunrise pointed out the errors, Judge Quitain acknowledged the mistake and reset the August 11, 2004 hearing to August 27, 2004.¹³⁰

Because of Judge Quitain's actions, Spouses Limso and Davao Sunrise filed a *Motion for Compulsory Disqualification* on the ground that Judge Quitain was biased in Philippine National Bank's favor.¹³¹

In the *Order*¹³² dated March 10, 2005, Judge Quitain denied the *Motion for Compulsory Disqualification*.

Spouses Limso and Davao Sunrise moved for reconsideration of the March 10, 2005 *Order*, while Philippine National Bank filed an *Opposition to the Motion for Reconsideration*.¹³³

¹²⁸ Id. at 29–30.

¹²⁹ Id. at 30.

¹³⁰ Id. at 30–31.

¹³¹ Id. at 32.

¹³² Id. at 1447. The *Order* was issued by Judge Jesus V. Quitain of Branch 15, Regional Trial Court, Davao City.

¹³³ Id. at 32, *Petition for Review*.

The August 11, 2004 Order also denied Davao Sunrise's Motion to Transfer Case to Branch 17 or Dismiss the Same. Since the Motion to Transfer is a rehash of Davao Sunrise's Motion to Expunge and/or Dismiss Petition, the denial of the Motion to Transfer is tantamount to the denial of Davao Sunrise's Motion to Expunge and/or Dismiss.¹³⁴ The August 11, 2004 Order did not specifically state that Spouses Limso and Davao Sunrise's Motion for Reconsideration dated March 28, 2003 was denied, but since the issues raised in the Motion to Reconsideration were also raised in the Motion to Expunge, the August 11, 2004 Order also effectively denied the Motion for Reconsideration.¹³⁵

Thus, Spouses Limso and Davao Sunrise filed a Petition¹³⁶ for Certiorari before the Court of Appeals, which was docketed as CA G.R. SP No. 85847.¹³⁷ Spouses Limso and Davao Sunrise assailed the March 21, 2003 Order denying Davao Sunrise's Motion to Expunge and/or Dismiss Petition for Issuance of Writ of Possession, as well as the August 11, 2004 Order denying Davao Sunrise's Motion to Dismiss.¹³⁸

On September 1, 2004, the Court of Appeals promulgated its Decision¹³⁹ in CA G.R. No. 79500¹⁴⁰ denying Spouses Limso and Davao Sunrise's Petition, which assailed Judge Quitain's denial of their Motion to Inhibit.¹⁴¹ The Court of Appeals ruled that Judge Quitain's reversal of Judge Layague's Orders "may constitute an error of judgment . . . but it is not necessarily an evidence of bias and partiality."¹⁴²

Spouses Limso and Davao Sunrise moved for reconsideration on September 23, 2004. The Motion was denied in the Resolution¹⁴³ dated August 11, 2005.¹⁴⁴

While the cases between Spouses Limso, Davao Sunrise, and Philippine National Bank were pending, Philippine National Bank, through counsel, filed administrative¹⁴⁵ and criminal complaints¹⁴⁶ against Atty.

¹³⁴ Id.

¹³⁵ Id.

¹³⁶ Id. at 1465–1514.

¹³⁷ Id. at 33, Petition for Review.

¹³⁸ Id. at 1465–1466, Petition docketed as CA G.R. SP No. 85847.

¹³⁹ Id. at 63–70. The Decision was penned by Associate Justice Mariflor P. Punzalan Castillo (Chair) and concurred in by Associate Justices Sesonando E. Villon and Edgardo A. Camello of the Special Twenty-Second Division.

¹⁴⁰ Id. at 64. CA G.R. SP No. 79500 is a Petition for Certiorari questioning the trial court's denial of the Motion for Inhibition.

¹⁴¹ Id. at 33, Petition for Review.

¹⁴² Id. at 69, Court of Appeals Decision in CA G.R. SP No. 79500.

¹⁴³ Id. at 72–73. The Resolution was penned by Associate Justice Edgardo A. Camello and concurred in by Associate Justices Teresita Dy-Liacco Flores (Chair) and Myrna Dimaranan-Vidal of the Twenty-First Division.

¹⁴⁴ Id. at 33–34, Petition for Review.

¹⁴⁵ *Rollo* (G.R. No. 205463), p. 87, Land Registration Authority's Resolution in Adm. Case No. 02-13. The administrative case was for Grave Misconduct and Conduct Unbecoming of a Public Official. The

Patriarca.

The administrative case against Atty. Patriarca was docketed as Administrative Case No. 02-13.¹⁴⁷

In the Resolution¹⁴⁸ dated January 12, 2005, the Land Registration Authority found Atty. Patriarca guilty of grave misconduct and dismissed her from the service.¹⁴⁹ Included in the Resolution are the following pronouncements:

The registration of these documents became complete when respondent affixed her signature below these annotations. Whatever information belatedly gathered thereafter relative to the circumstances as to the registrability of these documents, respondent cannot unilaterally take judicial notice thereof and proceed to lift at her whims and caprices what has already been officially in force and effective, by erasing thereon her signature. With her years of experience in the Registry, not to mention her being a lawyer, respondent should have taken the appropriate steps in filing a query to this Authority regarding the matter or should have consulted Section 117 of PD 1529 in relation to Section 12 of Rule 43. The deplorable act of Respondent was fraught with partiality to favor the DSIDC and Sps. Limso.¹⁵⁰

Atty. Asteria E. Cruzabra (Atty. Cruzabra) replaced Atty. Patriarca as Register of Deeds of Davao City.¹⁵¹ Philippine National Bank wrote a letter to Atty. Cruzabra, arguing “that the Sheriff’s Provisional Certificate of Sale was already validly registered[,]”¹⁵² and the unauthorized application of correction fluid¹⁵³ to cover the original signature of the Acting Register of Deeds “did not deprive the Bank of its rights under the registered

complaints against Atty. Patriarca were filed in 2002. The Resolution of the Land Registration Authority in the administrative case against Atty. Patriarca states that in a directive dated July 31, 2002, she was directed to show cause why disciplinary action should not be taken against her.

¹⁴⁶ Id. at 16, Petition for Review on Certiorari. The criminal Complaint was filed before the Office of the Ombudsman-Mindanao for violation of Rep. Act No. 3019, sec. 3(f), which provides:

SECTION 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

.....

(f) Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.

¹⁴⁷ Id. at 16, Petition for Review on Certiorari. The administrative case against Atty. Patriarca was entitled *Ma. L. Pesayco v. Florenda F.T. Patriarca*.

¹⁴⁸ Id. at 87–90.

¹⁴⁹ Id. at 90.

¹⁵⁰ Id. at 17, Petition for Review on Certiorari.

¹⁵¹ Id.

¹⁵² Id.

¹⁵³ The parties used the term “snowpake.” “Snowpake” is a colloquial term describing the white correction fluid used to cover errors written or printed on paper. In this case, a signature was erased using correction fluid.

documents.”¹⁵⁴

Meanwhile, on February 10, 2005, as CA-G.R. CV No. 79732, which was an appeal from Civil Case No. 28,170-2000 (Petition for Reformation and Annulment of Contract with Damages), was still pending, Philippine National Bank filed the following applications before the Court of Appeals Nineteenth Division:¹⁵⁵

- a. Application to Hold Davao Sunrise Investment and Development Corporation, the Spouses Robert Alan L. Limso and Nancy Lee Limso and Wellington Insurance Company, Inc. Jointly and Severally liable for Damages on the Injunction Bond; and
- b. Application for the Appointment of PNB as Receiver[.]¹⁵⁶

Spouses Limso and Davao Sunrise filed their opposition to Philippine National Bank’s application on March 29, 2005.¹⁵⁷ Philippine National Bank filed its Reply to the Opposition on May 5, 2005.¹⁵⁸

On March 2, 2006, the Court of Appeals denied Philippine National Bank’s applications, reasoning that:

It is a settled rule that the procedure for claiming damages on account of an injunction wrongfully issued shall be the same as that prescribed in Section 20 of Rule 57 of the Revised Rules of Court. Section 20 provides:

Sec. 20. Claim for damages on account of improper, irregular or excessive attachment. - An application for damages on account of improper, irregular or excessive attachment must be filed before the trial or before appeal is perfected or before the judgment becomes executory, with due notice to the attaching obligee or his surety or sureties, setting forth the facts showing his right to damages and the amount thereof. Such damages may be awarded only after proper hearing and shall be included in the judgment on the main case.

If the judgment of the appellate court be favorable to the party against whom the attachment was issued, he must claim damages sustained during the pendency of the appeal by filing an application in the appellate court with notice to the party in whose favor the attachment was issued or his surety or sureties, before the judgment of the appellate court becomes executory. The appellate court

¹⁵⁴ *Rollo* (G.R. No. 205463), p. 17, Petition for Review on Certiorari.

¹⁵⁵ *Rollo* (G.R. No. 173194), pp. 262 and 317.

¹⁵⁶ *Id.* at 58, Petition for Review.

¹⁵⁷ *Id.* at 58–59.

¹⁵⁸ *Id.* at 59.

may allow the application to be heard and decided by the trial court.

Nothing herein contained shall prevent the party against whom the attachment was issued from recovering in the same action the damages awarded to him from any property of the attaching obligee not exempt from execution should the bond or deposit given by the latter be insufficient or fail to fully satisfy the award.

Records show that when this Court annulled the RTC's order of injunction, Davao Sunrise thereafter elevated the matter to the Supreme Court. On July 24, 2002, the Supreme Court denied its petition for having been filed out of time and an Entry of Judgment was issued on Sept. 11, 2002.

PNB's instant application however was filed only on February 17, 2005 and/or in the course of its appeal on the main case – about two (2) years and five (5) months after the judgment annulling the injunction order attained finality.

Clearly, despite that it already obtained a favorable judgment on the injunction matter, PNB failed to file (before the court a quo) an application for damages against the bond before judgment was rendered in the main case by the court a quo. Thus, even for this reason alone, Davao Sunrise and its bondsman are relieved of further liability thereunder.¹⁵⁹ (Citations omitted)

The Court of Appeals also denied Philippine National Bank's application to be appointed as receiver for failure to fulfill the requirements to be appointed as receiver and for failure to prove the grounds for receivership.¹⁶⁰ It discussed that to appoint Philippine National Bank as receiver would violate the rule that "neither party to a litigation should be appointed as receiver without the consent of the other because a receiver should be a person indifferent to the parties and should be impartial and disinterested."¹⁶¹ The Court of Appeals noted that Philippine National Bank was not an impartial and disinterested party, and Davao Sunrise objected to Philippine National Bank's appointment as receiver.¹⁶²

In addition, Rule 59, Section 1(a)¹⁶³ of the 1997 Rules of Court

¹⁵⁹ Id. at 79–80, Court of Appeals Resolution in CA-G.R. CV. No. 79732.

¹⁶⁰ Id. at 80–81.

¹⁶¹ Id. at 80, citing *Commodities Storage & Ice Plant Corporation v. Court of Appeals*, 340 Phil. 551, 559 (1997) [Per J. Puno, Second Division].

¹⁶² Id. at 80.

¹⁶³ RULES OF COURT, Rule 59, sec. 1(a) provides:

Rule 59. Receivership

SECTION 1. Appointment of Receiver. — Upon a verified application, one or more receivers of the property subject of the action or proceeding may be appointed by the court where the action is pending, or by the Court of Appeals or by the Supreme Court, or a member thereof, in the following cases:

- (a) When it appears from the verified application, and such other proof as the court may require, that the party applying for the appointment of a receiver has an interest in the property or fund which is the subject of the action or proceeding, and that such property or fund is in danger of being lost, removed, or materially injured unless a receiver be appointed to administer and preserve it[.]

requires that the “property or fund involved is in danger of being lost, removed, or materially injured.” The Court of Appeals found that the properties involved were “not in danger of being lost, removed[,] or materially injured.”¹⁶⁴ Further, Philippine National Bank’s application was premature since the loan agreement was still pending appeal and “a receiver should not be appointed to deprive a party who is in possession of the property in litigation.”¹⁶⁵

The dispositive portion of the Court of Appeals Resolution¹⁶⁶ states:

WHEREFORE, above premises considered, the Philippine National Bank’s Application to Hold Davao Sunrise Investment and Development Corporation, the Spouses Robert Alan L. Limso and Nancy Lee Limso and Wellington Insurance Company, Inc. Jointly and Severally Liable for Damages on the Injunction Bond and its Application for the Appointment of PNB as Receiver are hereby both DENIED. And, for the reasons above set forth, the Plaintiff-Appellees’ Motion to Dismiss is likewise DENIED.

With the filing of the Appellants’ and the Appellees’ respective Brief(s), this case is considered SUBMITTED for Decision and ORDERED re-raffled to another justice for study and report.

SO ORDERED.¹⁶⁷

Philippine National Bank filed a Motion for Reconsideration on March 28, 2006, which was denied in the Resolution¹⁶⁸ dated May 26, 2006.¹⁶⁹

Thus, on July 21, 2006, Philippine National Bank filed before this court a Petition for Review¹⁷⁰ on Certiorari questioning the Court of Appeals’ denial of its applications.¹⁷¹ This was docketed as G.R. No. 173194.¹⁷²

On February 16, 2007, Philippine National Bank’s Ex-Parte Petition for Issuance of a Writ of Possession docketed as Other Case No. 124-2002

¹⁶⁴ *Rollo* (G.R. No. 173194), p. 81, Court of Appeals Resolution in CA-G.R. CV. No. 79732.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 77–82. The Resolution was penned by Associate Justice Normandie B. Pizarro and was concurred in by Associate Justices Edgardo A. Camello (Chair) and Ricardo R. Rosario of the Twenty-Third Division.

¹⁶⁷ *Id.* at 82.

¹⁶⁸ *Id.* at 84–86. The Resolution was penned by Associate Justice Normandie B. Pizarro and was concurred in by Associate Justices Edgardo A. Camello (Chair) and Ramon R. Garcia, of the Special Twenty-Third Division.

¹⁶⁹ *Id.* at 59, Petition for Review.

¹⁷⁰ *Id.* at 45–75.

¹⁷¹ *Id.* at 59.

¹⁷² *Id.* at 45.

was dismissed¹⁷³ based on the following grounds:

- (1) For purposes of the issuance of the writ of possession, Petitioner should complete the entire process in extrajudicial foreclosure . . .
- (2) The records disclose the [sic] contrary to petitioner's claim, the Certificate of Sale covering the subject properties has not been registered with the Registry of Deeds of Davao City as the Court finds no annotation thereof. As such, the sale is not considered perfected to entitled petitioner to the writ of possession as a matter of rights [sic].¹⁷⁴

Philippine National Bank filed a Motion for Reconsideration with Motion for Evidentiary Hearing.¹⁷⁵

Acting on the Motion for Reconsideration, the trial court required the Registry of Deeds to comment on the matter.¹⁷⁶

The trial court eventually denied the Motion for Reconsideration.¹⁷⁷

Philippine National Bank appealed the trial court Decision dismissing the Petition for Issuance of a Writ of Possession by filing a Rule 41 Petition before the Court of Appeals, which was docketed as CA-G.R. CV No. 01464-MIN.¹⁷⁸

Meanwhile, when CA-G.R. CV No. 79732 was re-raffled,¹⁷⁹ it was re-docketed as CA-G.R. CV No. 79732-MIN.¹⁸⁰

In CA-G.R. CV No. 79732-MIN, the Court of Appeals resolved the issue of “whether or not there has been mutuality between the parties, based on their essential equality, on the subject imposition of interest rates on plaintiffs-appellees’ loan obligation, i.e., the original loan and the restructured loan.”¹⁸¹

¹⁷³ Id. at 558–561. Other Case No. 124-2002 was re-raffled to Branch 16 of the Regional Trial Court of Davao City. The Order was issued by Presiding Judge Emmanuel C. Carpio.

¹⁷⁴ *Rollo* (G.R. No. 205463), p. 19, Petition for Review on Certiorari; *Rollo* (G.R. No. 173194), p. 561, Order in Other Case No. 124-2002.

¹⁷⁵ *Rollo* (G.R. No. 205463), p. 19, Petition for Review on Certiorari.

¹⁷⁶ Id. at 21.

¹⁷⁷ Id. at 23.

¹⁷⁸ Id. at 23, Petition for Review on Certiorari, and 55, Court of Appeals Decision in CA-G.R. CV No. 01464-MIN.

¹⁷⁹ *Rollo* (G.R. No. 173194), p. 82, Court of Appeals Resolution in CA-G.R. CV No. 79732.

¹⁸⁰ *Rollo* (G.R. No. 196958), p. 98, Court of Appeals Decision in CA-G.R. CV No. 79732-MIN.

¹⁸¹ *Rollo* (G.R. No. 196958), p. 111, Court of Appeals Decision in CA-G.R. CV No. 79732-MIN.

On August 13, 2009, the Court of Appeals promulgated its Decision¹⁸² in CA-G.R. CV No. 79732-MIN. It held that there was no mutuality between the parties because the interest rates were unilaterally determined and imposed by Philippine National Bank.¹⁸³

The Court of Appeals further explained that the contracts between Spouses Limso and Davao Sunrise, on one hand, and Philippine National Bank, on the other, did not specify the applicable interest rates. The contracts merely stated the interest rate to be “at a rate per annum that is determined by the bank[;]”¹⁸⁴ “at the rate that is determined by the Bank to be the Bank’s prime rate in effect at the Date of Drawdown[;]”¹⁸⁵ and “at the rate per annum to be set by the Bank. The interest rate shall be reset by the Bank every month.”¹⁸⁶ In addition, the interest rate would depend on the prime rate, which was “to be determined by the bank[.]”¹⁸⁷ It was also discussed that:

But it even gets worse. After appellant bank had unilaterally determined the imposable interest on plaintiffs-appellees loans and after the latter had been notified thereof, appellant bank unilaterally increased the interest rates. Further aggravating the matter, appellant bank did not increase the interest rate only once but on numerous occasions. Appellant bank unilaterally and arbitrarily increased the already arbitrarily imposed interest rate within intervals of only seven (7) days and/or one (1) month.

.....

The interests imposed under the *Conversion, Restructuring and Extension Agreement*, is not a valid imposition. DSIDC and Spouses Limso have no choice except to assent to the conditions therein as they are heavily indebted to PNB. In fact, the possibility of the foreclosure of their mortgage securities is right in their doorsteps. Thus it cannot be considered “*contracts*” between the parties, as the borrower’s participation thereat has been reduced to an unreasonable alternative that is to “*take it or leave it.*” It has been used by PNB to raise interest rates to levels which have enslaved appellees or have led to a hemorrhaging of the latter’s assets. Hence, for being an exploitation of the weaker party, the borrower, the alleged letter-contracts should also be struck down for being violative of the principle of mutuality of contracts under Article 1308.¹⁸⁸ (Emphasis in the original)

¹⁸² Id. at 98–127. The Decision was penned by Associate Justice Ruben C. Ayson, concurred in by Associate Justices Romulo V. Borja (Chair) and Edgardo A. Camello, and dissented from by Associate Justices Rodrigo F. Lim, Jr. and Michael P. Elbinias, of the Special Division of Five, Mindanao Station. Associate Justice Camello penned a Concurring Opinion. Associate Justice Lim, Jr. penned a Separate Dissenting Opinion.

¹⁸³ Id. at 111–114.

¹⁸⁴ Id. at 111, *citing* par. 1.04 of the original revolving credit line agreement.

¹⁸⁵ Id. at 112, *citing* par. 1.03 of the original loan agreement.

¹⁸⁶ Id., *citing* par. 2.04 of the interest provision of Loan I.

¹⁸⁷ Id. at 118.

¹⁸⁸ Id. at 119–120.

Thus, the Court of Appeals nullified the interest rates imposed by Philippine National Bank:

We reiterate that since the unilateral imposition of rates of interest by appellant bank is not only violative of the principle of mutuality of contracts, but also were found to be unconscionable, iniquitous and unreasonable, it is as if there was no express contract thereon. Thus, the interest provisions on the (a) revolving credit line in the amount of three hundred (300) million pesos, (b) seven-year long term loan in the amount of four hundred (400) million pesos; and (c) Conversions, Restructuring and Extension Agreement, Real Estate Mortgage, promissory notes, and all other loan documents executed contemporaneous with or subsequent to the execution of the said agreements are hereby declared null and void.

Such being the case, We apply the ruling of the Supreme Court in the case of *United Coconut Planters Bank vs. Spouses Samuel and Odette Beluso* which stated:

“We see, however, sufficient basis to impose a 12% legal interest in favor of petitioner in the case at bar, as what we have voided is merely the stipulated rate of interest and not the stipulation that the loan shall earn interest.”¹⁸⁹ (Citation omitted)

As to the trial court’s reduction of the penalty charges and attorney’s fees, the Court of Appeals affirmed the trial court’s ruling and stated that Article 1229¹⁹⁰ of the Civil Code allows for the reduction of penalty charges that are unconscionable.¹⁹¹ The Court of Appeals discussed that:

The penalties imposed by PNB are clearly unconscionable. Any doubt as to this fact can be removed by simply glancing at the penalties charged by defendant-appellant which . . . already amounted to an incredibly huge amount of P176,098,045.94 despite payments that already exceeded the amount of the loan as of 1998.

With respect to attorney’s fees, the Supreme Court had consistently and invariably ruled that even with the presence of an agreement between the parties, the court may nevertheless reduce attorney’s fees though fixed in the contract when the amount thereof appears to be unconscionable or unreasonable. Again, the fact that the attorney’s fees imposed by PNB are unconscionable and unreasonable can clearly be seen. The attorney’s fees imposed similarly points to an incredibly huge sum of P136,900,928.85 as

¹⁸⁹ Id. at 124.

¹⁹⁰ CIVIL CODE, art. 1229 provides:

Article 1229. The judge shall equitable reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.

¹⁹¹ *Rollo* (G.R. No. 196958), pp. 125–126.

of October 30, 2000. Therefore, its reduction in the assailed decision is well-grounded.¹⁹² (Citation omitted)

The dispositive portion of the Court of Appeals Decision states:

WHEREFORE, the assailed Decision dated June 19, 2002 and Order dated August 13, 2002 of the Regional Trial Court of Davao City, Branch 17 in Civil Case No. 28,170-2000 declaring the unilateral imposition of interest rates by defendant-appellant PNB as null and void appealed from are **AFFIRMED with the MODIFICATION** that the obligation of plaintiffs-appellees arising from the Loan and Revolving Credit Line and subsequent *Conversion, Restructuring and Extension Agreement* as Loan I and Loan II shall earn interest at the legal rate of twelve percent (12%) per annum computed from September 1, 1993, until fully paid and satisfied.

SO ORDERED.¹⁹³ (Emphasis in the original)

Philippine National Bank moved for reconsideration on September 3, 2009,¹⁹⁴ arguing that the interest rates were “mutually agreed upon[;]”¹⁹⁵ that Spouses Limso and Davao Sunrise “never questioned the . . . interest rates[;]”¹⁹⁶ and that they “acknowledged the total amount of their debt (inclusive of loan principal and accrued interest) to [Philippine National Bank] in the Conversion, Restructuring and Extension Agreement which restructured their obligation to [Philippine National Bank] in the amount of P1.067 Billion[.]”¹⁹⁷

Spouses Limso and Davao Sunrise moved for partial reconsideration on September 9, 2009,¹⁹⁸ pointing out that their obligation to Philippine National Bank was only ₱205,084,682.61, as stated in the trial court’s Order dated August 13, 2002 in Civil Case No. 28,170-2000.¹⁹⁹

Both Motions were denied by the Court of Appeals in the Resolution²⁰⁰ dated May 18, 2011.

¹⁹² Id.

¹⁹³ Id. at 126–127.

¹⁹⁴ Id. at 45, Petition for Review.

¹⁹⁵ Id. at 154, Court of Appeals Resolution in CA-G.R. CV No. 79732-MIN.

¹⁹⁶ Id.

¹⁹⁷ Id.

¹⁹⁸ Id. at 45, Petition for Review.

¹⁹⁹ Id. at 160, Court of Appeals Resolution in CA-G.R. CV No. 79732-MIN.

²⁰⁰ Id. at 153–168. The Resolution was penned by Associate Justice Romulo V. Borja (Chair), concurred in by Associate Justices Edgardo A. Camello and Zenaida Galapate Laguilles, and dissented from by Associate Justices Rodrigo F. Lim, Jr. and Edgardo T. Lloren, of the Special Former Special Twenty-Second Division, Mindanao Station. Associate Justice Lim, Jr. penned a Dissenting Opinion.

The Court of Appeals held that Philippine National Bank's Motion for Reconsideration raised issues that were a mere rehash of the issues already ruled upon.²⁰¹

With regard to Spouses Limso and Davao Sunrise's Motion for Partial Reconsideration, the Court of Appeals ruled that:

Since the appellees did not appeal from the decision of the lower court, they are not entitled to any award of affirmative relief. It is well settled that an appellee who has not himself appealed cannot obtain from the appellate court any affirmative relief other than those granted in the decision of the court below. The appellee can only advance any argument that he may deem necessary to defeat the appellant's claim or to uphold the decision that is being disputed. . . . Thus, the lower court's finding that the appellees have an unpaid obligation with PNB, and not the other way around, should stand. It bears stressing that appellees even acknowledged their outstanding indebtedness with the PNB when they filed their "Urgent Motion for Execution Pending Appeal" of the August 13, 2002 Order of the lower court decreeing that appellees' remaining obligation with PNB is P205,084,682.61. They cannot now claim that PNB is the one indebted to them in the amount of P15,915,588.89.²⁰²

Philippine National Bank filed a Petition for Review on Certiorari²⁰³ assailing the Decision in CA-G.R. CV No. 79732-MIN. Philippine National Bank argues that there was mutuality of contracts between the parties, and that the interest rates imposed were valid in view of the escalation clauses in their contract.²⁰⁴ Philippine National Bank's Petition for Review was docketed as G.R. No. 196958.²⁰⁵

Spouses Limso and Davao Sunrise also filed a Petition for Review²⁰⁶ on Certiorari questioning the ruling of the Court of Appeals in CA-G.R. CV No. 79732-MIN that their outstanding obligation was ₱803,185,411.11.²⁰⁷ Spouses Limso and Davao Sunrise argue that they "made overpayments in the amount of P15,915,588.89."²⁰⁸ This was docketed as G.R. No. 197120.²⁰⁹

On January 21, 2013, the Court of Appeals dismissed Philippine National Bank's appeal docketed as CA-G.R. CV No. 01464-MIN (referring to the Petition for the Issuance of a Writ of Possession) on the ground that

²⁰¹ Id. at 160.

²⁰² Id. at 167.

²⁰³ Id. at 8–96.

²⁰⁴ Id. at 56–75.

²⁰⁵ Id. at 8.

²⁰⁶ *Rollo* (G.R. No. 197120), pp. 3–39.

²⁰⁷ Id. at 4.

²⁰⁸ Id.

²⁰⁹ Id. at 3.

Philippine National Bank availed itself of the wrong remedy.²¹⁰ What the Philippine National Bank should have filed was a “petition for review under Rule 45 and not an appeal under Rule 41[.]”²¹¹

On March 15, 2013, the Philippine National Bank filed a Petition for Review on Certiorari²¹² before this court, assailing the dismissal of its appeal before the Court of Appeals and praying that the Decision of the trial court—that the Sheriff’s Provisional Certificate of Sale was not signed by the Register of Deeds and was not registered—be reversed and set aside. The Petition was docketed as G.R. No. 205463.²¹³

G.R. No. 158622 was filed on July 1, 2003;²¹⁴ G.R. No. 169441 was filed on September 14, 2005;²¹⁵ G.R. No. 172958 was filed on June 26, 2006;²¹⁶ G.R. No. 173194 was filed on July 21, 2006;²¹⁷ G.R. No. 196958 was filed on June 17, 2011;²¹⁸ G.R. No. 197120 was filed on June 22, 2011;²¹⁹ and G.R. No. 205463 was filed on March 15, 2013.²²⁰

Docket Number	Original Case	Assailed Order/Decision
G.R. No. 158622	Petition for Declaratory Relief with Prayer for the Issuance of Preliminary Injunction and Application for Temporary Restraining Order ²²¹	Court of Appeals Decision dated December 11, 2002 dismissing the Petition for Certiorari filed by Philippine National Bank. The Petition for Certiorari questioned the issuance of a writ of preliminary injunction in favor of Spouses Limso and Davao Sunrise. ²²²
G.R. No. 169441	Ex-Parte Petition ²²³ for Issuance of Writ of Possession under Act No. 3135 filed by Philippine National Bank, praying that	Court of Appeals Decision dated September 1, 2004 and Resolution dated August 11, 2005. ²²⁴

²¹⁰ *Rollo* (G.R. No. 205463), pp. 65–66, Court of Appeals Decision in CA-G.R. CV No. 01464-MIN.

²¹¹ *Id.* at 23–24, Petition for Review on Certiorari.

²¹² *Id.* at 8–52.

²¹³ *Id.* at 8.

²¹⁴ *Rollo* (G.R. No. 158622, Vol. I), p. 3, Petition for Review on Certiorari.

²¹⁵ *Rollo* (G.R. No. 169441), p. 3, Petition for Review.

²¹⁶ *Rollo* (G.R. No. 172958), p. 66, Petition for Review.

²¹⁷ *Rollo* (G.R. No. 173194), p. 45, Petition for Review.

²¹⁸ *Rollo* (G.R. No. 196958), p. 8, Petition for Review.

²¹⁹ *Rollo* (G.R. No. 197120), p. 3, Petition for Review.

²²⁰ *Rollo* (G.R. No. 205463), p. 8, Petition for Review on Certiorari.

²²¹ *Rollo* (G.R. No. 158622, Vol. I), p. 205, Regional Trial Court Order in SP. Civil Case No. 29,036-2002.

²²² *Id.* at 94, Court of Appeals Decision in CA G.R. SP. No. 71527.

²²³ *Rollo* (G.R. No. 169441), pp. 640–647.

²²⁴ *Id.* at 3, Petition for Review.

		it be granted possession over four (4) parcels of land owned by Davao Sunrise	Spouses Limso and Davao Sunrise filed a Motion to Inhibit Judge Quitain, which was denied by Judge Quitain. Thus, Spouses Limso and Davao Sunrise questioned the denial of their Motion before the Court of Appeals. ²²⁵
G.R. No. 172958		Ex-Parte Petition ²²⁶ for Issuance of the Writ of Possession under Act No. 3135 filed by Philippine National Bank, praying that it be granted possession over four (4) parcels of land owned by Davao Sunrise	Court of Appeals Decision ²²⁷ dated September 1, 2005 and Resolution ²²⁸ dated May 26, 2006. The Petition for Certiorari and Prohibition filed by Spouses Limso and Davao Sunrise assailed two Orders of Judge Quitain, which denied their Motion to Expunge and/or Dismiss Petition for Issuance of Writ of Possession. ²²⁹
G.R. No. 173194		Petition for Reformation or Annulment of Contract with Damages filed by Spouses Limso and Davao Sunrise ²³⁰	Court of Appeals Resolution ²³¹ dated March 2, 2006, which denied Philippine National Bank's (1) Application to Hold [Spouses Limso and Davao Sunrise] and the Surety Bond Company Jointly and Severally Liable for Damages on the Injunction Bond, and (2) Application for the Appointment of [Philippine National Bank] as Receiver.

²²⁵ Id. at 18–20 and 22.

²²⁶ *Rollo* (G.R. No. 169441), pp. 640–647.

²²⁷ *Rollo* (G.R. No. 172958), pp. 131–149. The Decision was penned by Associate Justice Edgardo A. Camello and concurred in by Associate Justices Teresita Dy-Liacco Flores (Chair) and Myrna Dimaranan-Vidal of the Twenty-First Division.

²²⁸ Id. at 150–156. The Resolution was penned by Associate Justice Edgardo A. Camello and concurred in by Associate Justices Teresita Dy-Liacco Flores (Chair) and Myrna Dimaranan-Vidal of the Former Twenty-First Division.

²²⁹ Id. at 132, Court of Appeals Decision in CA G.R. SP No. 85847.

²³⁰ *Rollo* (G.R. No. 173194), pp. 131–148, Amended Complaint in Civil Case No. 28,170-2000.

²³¹ Id. at 77–82. The Resolution was penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Edgardo A. Camello (Chair) and Ricardo R. Rosario of the Twenty-Third Division.

		Also assailed was the Court of Appeals Resolution ²³² dated May 26, 2006, which denied the Motion for Reconsideration filed by Philippine National Bank.
G.R. No. 196958	Petition for Reformation or Annulment of Contract with Damages filed by Davao Sunrise and Spouses Limso ²³³	<p>Court of Appeals Decision²³⁴ dated August 13, 2009 and Court of Appeals Resolution²³⁵ dated May 18, 2011 docketed as CA-G.R. CV No. 79732-Min.</p> <p>The decision dated August 13, 2009 affirmed with modification the decision of the trial court in Civil Case No. 28,170-2000.²³⁶</p> <p>The Resolution dated May 18, 2011 in CA-G.R. CV No. 79732-Min denied the</p>

²³² Id. at 84–86. The Resolution was penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Edgardo A. Camello (Chair) and Ramon R. Garcia of the Special Twenty-Third Division.

²³³ *Rollo* (G.R. No. 196958), p. 16. Petition for Review.

²³⁴ Id. at 98–127, Court of Appeals Decision in CA-G.R. CV No. 79732-MIN. The Decision was penned by Associate Justice Ruben C. Ayson, concurred in by Associate Justices Romulo V. Borja (Chair) and Edgardo A. Camello, and dissented from by Associate Justices Rodrigo F. Lim, Jr. and Michael P. Elbinias of the Special Division of Five, Mindanao Station. Associate Justice Camello penned a Concurring Opinion. Associate Justice Lim, Jr. penned a Separate Dissenting Opinion. The dispositive portion of the Court of Appeals decision stated:

Wherefore, the assailed Decision dated June 19, 2002 and Order dated August 13, 2002 of the Regional Trial Court of Davao City, Branch 17 in Civil Case No. 28, 170-2000 declaring the unilateral imposition of interest rates by defendant-appellant PNB as null and void appealed from are affirmed with the modification that the obligation of plaintiffs-appellees arising from the Loan and Revolving Credit Line and subsequent Conversion, Restructuring and Extension Agreement as Loan I and Loan II should earn interest at the legal rate of twelve percent (12%) per annum computed from September 1, 1993 until fully paid and satisfied.

²³⁵ Id. at 153–168, Court of Appeals Resolution in CA-G.R. CV No. 79732-MIN. The Resolution was penned by Associate Justice Romulo V. Borja (Chair), concurred in by Associate Justices Edgardo A. Camello and Zenaida Galapate Laguilles, and dissented from by Associate Justices Rodrigo F. Lim, Jr. and Edgardo T. Lloren of the Special Former Special Twenty-Second Division, Mindanao Station. Associate Justice Lim, Jr. penned a Dissenting Opinion. The dispositive portion of the Resolution states:

Wherefore, the Motion for Reconsideration dated September 3, 2009 filed by defendant-appellant, Philippine National Bank and the Motion for Partial Reconsideration dated September 4, 2009 filed by plaintiffs-appellees Davao Sunrise Investment and Development Corporation and Spouses Robert Alan L. Limso and Nancy Lee Limso, are BOTH DENIED for lack of merit.

SO ORDERED.

²³⁶ *Rollo* (G.R. No. 196958), pp. 98-127.

		<p>Motion for Reconsideration filed by Philippine National Bank and also denied the Motion for Partial Reconsideration filed by Spouses Limso and Davao Sunrise.²³⁷</p> <p>The Rule 41 appeal was filed by Philippine National Bank.²³⁸</p>
G.R. No. 197120	Petition ²³⁹ for Reformation or Annulment of Contract with Damages filed by Spouses Limso and Davao Sunrise	<p>Court of Appeals Decision²⁴⁰ dated August 13, 2009 and Court of Appeals Resolution²⁴¹ dated May 18, 2011.</p> <p>Spouses Limso and Davao Sunrise assailed the portion of the Court of Appeals Decision stating that their outstanding obligation was ₱803,185,411.11.²⁴²</p>
G.R. No. 205463	Ex-Parte Petition for Issuance of the Writ of Possession under Act No. 3135 filed by Philippine National Bank, praying that it be granted possession over four parcels of land owned by Davao Sunrise ²⁴³	<p>Court of Appeals Decision²⁴⁴ dated January 21, 2013 dismissing the appeal under Rule 41 filed by Philippine National Bank for being the wrong remedy.</p>

In the Manifestation and Motion²⁴⁵ dated May 26, 2006, Davao

²³⁷ Id. at 153-168.

²³⁸ Id. at 98.

²³⁹ *Rollo* (G.R. No. 197120), pp. 235–252.

²⁴⁰ Id. at 44–73. The Decision was penned by Associate Justice Ruben C. Ayson, concurred in by Associate Justices Romulo V. Borja (Chair) and Edgardo A. Camello, and dissented from by Associate Justices Rodrigo F. Lim, Jr. and Michael P. Elbinias of the Special Division of Five, Mindanao Station. Associate Justice Camello penned a Concurring Opinion. Associate Justice Lim, Jr. penned a Separate Dissenting Opinion.

²⁴¹ Id. at 99–114. The Resolution was penned by Associate Justice Romulo V. Borja (Chair), concurred in by Associate Justices Edgardo A. Camello and Zenaida Galapate Laguilles, and dissented from by Associate Justices Rodrigo F. Lim, Jr. and Edgardo T. Lloren, of the Special Former Special Twenty-Second Division, Mindanao Station. Associate Justice Lim, Jr. penned a Dissenting Opinion.

²⁴² Id. at 4, Petition for Review.

²⁴³ *Rollo* (G.R. No. 205463), p. 56, Court of Appeals Decision in CA-G.R. CV No. 01464-MIN.

²⁴⁴ Id. at 55–66. The Decision was penned by Associate Justice Romulo V. Borja and concurred in by Associate Justices Ma. Luisa Quijano-Padilla and Marie Christine Azcarraga-Jacob of the Twenty-First Division.

²⁴⁵ *Rollo* (G.R. No. 169441), pp. 3000–3003.

Sunrise prayed that it be allowed to withdraw G.R. No. 169441 since the issues in the Petition had become moot and academic.

In the Resolution²⁴⁶ dated August 7, 2006, this court consolidated G.R. Nos. 172958, 173194, and 169441, with G.R. No. 158622 as the lowest-numbered case.

Davao Sunrise's Manifestation and Motion dated May 26, 2006, which prayed that it be allowed to withdraw G.R. No. 169441, was granted in the Resolution²⁴⁷ dated October 16, 2006. Thus, G.R. No. 169441 was deemed closed and terminated as of October 16, 2006.²⁴⁸

In the Resolution²⁴⁹ dated March 7, 2007 in G.R. No. 173194, this court required respondents Spouses Limso and Davao Sunrise to file their comment.

In the Resolution²⁵⁰ dated July 4, 2011, G.R. No. 197120 was consolidated with G.R. No. 196958.

On May 17, 2012, counsel for Spouses Limso and Davao Sunrise notified this court of the death of Robert Alan L. Limso.²⁵¹

On October 9, 2013, Spouses Limso and Davao Sunrise filed a Motion to Withdraw Petitions in G.R. Nos. 172958, 169441 and 158622.²⁵² Davao Sunrise and Spouses Limso, through counsel, explained that G.R. No. 169441 had been mooted by Judge Quitain's voluntary inhibition from hearing and deciding Other Case No. 124-2002.²⁵³

After Judge Quitain had inhibited, Other Case No. 124-2002 was re-raffled to Branch 16 of the Regional Trial Court of Davao City.²⁵⁴ Other Case No. 124-2002 was dismissed in the Order²⁵⁵ dated February 16, 2007. Since Other Case No. 124-2002 was dismissed, G.R. No. 172958 was mooted as well.²⁵⁶

²⁴⁶ *Rollo* (G.R. No. 158622, Vol. I), pp. 1422–1423.

²⁴⁷ *Rollo* (G.R. No. 169441), pp. 1775–1776.

²⁴⁸ *Id.* at 1776.

²⁴⁹ *Rollo* (G.R. No. 173194), pp. 470A–470B.

²⁵⁰ *Rollo* (G.R. No. 197120), pp. 565–566.

²⁵¹ *Rollo* (G.R. No. 196958), pp. 381–382, Notice of Death.

²⁵² *Rollo* (G.R. No. 158622, Vol. II), pp. 1140–1149.

²⁵³ *Id.* at 1142–1143.

²⁵⁴ *Id.* at 1158, Regional Trial Court Order in Other Case No. 124-2002.

²⁵⁵ *Id.* at 1158–1160. The Order was penned by Presiding Judge Emmanuel C. Carpio of Branch 16, Regional Trial Court, Davao City.

²⁵⁶ *Id.* at 1143–1144, Spouses Limso and Davao Sunrise's Motion to Withdraw Petitions in G.R. Nos. 172958, 169441, and 158622.

With regard to G.R. No. 158622, counsel for Spouses Limso and Davao Sunrise explained:

It is clear, however, that the ruling of the Regional Trial Court of Davao City in Civil Case No. 28,170-2000 and the Court of Appeals in CA G.R. No. 79732 already rendered Civil Case No. 29,036-2002 moot and academic. Under the premises, there is no need for this Honorable Court to rule on the propriety of the dismissal of the said action for *Declaratory Relief* as the loan agreements --- from which the entire case stemmed --- had already been declared **NULL AND VOID**.²⁵⁷ (Emphasis in the original)

In the Resolution²⁵⁸ dated March 12, 2014, this court granted the Motion to Withdraw Petitions with regard to G.R. Nos. 172958 and 158622. The prayer for the withdrawal of G.R. No. 169441 was noted without action since G.R. No. 169441 was deemed closed and terminated in this court's Resolution dated October 16, 2006.²⁵⁹

On April 2, 2014, Spouses Limso and Davao Sunrise filed an "Omnibus Motion for Leave [1] To Intervene; [2] To File/ Admit Herein Attached Comment-in-Intervention; and [3] To Consolidate Cases"²⁶⁰ in G.R. No. 205463.

Spouses Limso and Davao Sunrise argue that they were allowed to participate in Other Case No. 124-2002, and that Philippine National Bank was in bad faith when it did not furnish Nancy Limso and Davao Sunrise copies of the Petition for Review it had filed.²⁶¹

In the Resolution²⁶² dated April 2, 2014, this court gave due course to the Petition and required the parties to submit their memoranda.

On April 15, 2014, Spouses Limso and Davao Sunrise filed a Motion to Dismiss the Petition in G.R. No. 173194 on the ground that the issues raised by Philippine National Bank are moot and academic. Spouses Limso and Davao Sunrise also reiterated that Philippine National Bank availed of the wrong remedy.²⁶³

In the Resolution²⁶⁴ dated July 9, 2014, this court recommended the consolidation of G.R. No. 205463 with G.R. Nos. 158622, 169441, 172958,

²⁵⁷ Id. at 1147.

²⁵⁸ *Rollo* (G.R. No. 205463), p. 1087.

²⁵⁹ Id.

²⁶⁰ Id. at 111–125.

²⁶¹ Id. at 113–114.

²⁶² Id. at 108–109.

²⁶³ Id. at 983–1005.

²⁶⁴ Id. at 968–969.

173194, 196958, and 197120.

In the Resolution²⁶⁵ dated October 13, 2014, this court noted and granted the Omnibus Motion for Leave to Intervene filed by counsel for Nancy Limso and Davao Sunrise.²⁶⁶ This court also noted the memoranda filed by counsel for Philippine National Bank, the Office of the Solicitor General, and counsel for Spouses Limso and Davao Sunrise.²⁶⁷

The remaining issues for resolution are those raised in G.R. Nos. 173194, 196958, 197120, and 205463, which are:

First, whether the Philippine National Bank's Petition for Review on Certiorari in G.R. No. 173194 is the wrong remedy to assail the March 2, 2006 Court of Appeals Resolution,²⁶⁸ which denied Philippine National Bank's (1) Application to Hold [Spouses Limso and Davao Sunrise] and the Surety Bond Company Jointly and Severally Liable for Damages on the Injunction Bond, and (2) Application for the Appointment of [Philippine National Bank] as Receiver;

Second, whether Philippine National Bank committed forum shopping when it filed an ex-parte Petition for the Issuance of a Writ of Possession and an Application to be Appointed as Receiver;

Third, whether the Court of Appeals erred in ruling that the interest rates imposed by Philippine National Bank were usurious and unconscionable;

Fourth, whether the Conversion, Restructuring and Extension Agreement executed in 1999 novated the original Loan and Credit Agreement executed in 1993;

Fifth, whether the Court of Appeals erred in dismissing the appeal under Rule 41 filed by Philippine National Bank, which assailed the Court of Appeals Decision dated January 21, 2013 in CA-G.R. CV No. 01464-MIN, for being the wrong remedy;

Sixth, whether the Sheriff's Provisional Certificate of Sale should be considered registered in view of the entry made by the Register of Deeds in

²⁶⁵ Id. at 972–973.

²⁶⁶ Id. at 972.

²⁶⁷ Id. at 973.

²⁶⁸ Id. at 77–82. The Resolution was penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Edgardo A. Camello (Chair) and Ricardo R. Rosario of the Twenty-Third Division.

the Primary Entry Book; and

Lastly, whether Philippine National Bank is entitled to a writ of possession.

I

The Petition for Review in G.R. No. 173194 should be denied.

The Petition docketed as G.R. No. 173194, filed by Philippine National Bank, questions the Court of Appeals Resolutions in CA-G.R. CV No. 79732-MIN dated March 2, 2006 and May 26, 2006, which denied Philippine National Bank's applications for damages on the injunction bond and to be appointed as receiver.²⁶⁹

The assailed Resolutions in G.R. No. 173194 are interlocutory orders and are not appealable.

Rule 41, Section 1²⁷⁰ of the Rules of Court provides:

SECTION 1. Subject of Appeal. — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

....

(b) An interlocutory order;

....

In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action as provided in Rule 65.

In addition, Rule 45, Section 1 of the Rules of Court provides:

SECTION 1. Filing of Petition with Supreme Court. — A party desiring to appeal by certiorari *from a judgment, final order or resolution* of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari[.] (Emphasis supplied)

²⁶⁹ Id. at 1001–1002.

²⁷⁰ As amended by A.M. 07-7-12-SC.

The difference between an interlocutory order and a final order was discussed in *United Overseas Bank v. Judge Ros*:²⁷¹

The word interlocutory refers to something intervening between the commencement and the end of the suit which decides some point or matter but is not a final decision of the whole controversy. This Court had the occasion to distinguish a final order or resolution from an interlocutory one in the case of *Investments, Inc. v. Court of Appeals*, thus:

x x x A “final” judgment or order is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto, *e.g.*, an adjudication on the merits which, on the basis of the evidence presented on the trial, declares categorically what the rights and obligations of the parties are and which party is in the right; or a judgment or order that dismisses an action on the ground, for instance, of *res judicata* or prescription. Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned. Nothing more remains to be done by the Court except to await the parties’ next move (which among others, may consist of the filing of a motion for new trial or reconsideration, or the taking of an appeal) and ultimately, of course, to cause the execution of the judgment once it becomes “final” or, to use the established and more distinctive term, “final and executory.”

xxx

xxx

xxx

Conversely, an order that does not finally dispose of the case, and does not end the Court's task of adjudicating the parties’ contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is “interlocutory” *e.g.*, an order denying motion to dismiss under Rule 16 of the Rules, or granting of motion on extension of time to file a pleading, or authorizing amendment thereof, or granting or denying applications for postponement, or production or inspection of documents or things, *etc.* Unlike a “final” judgment or order, which is appealable, as above pointed out, an “interlocutory” order may not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in the case.²⁷² (Citations omitted)

The Resolutions denying Philippine National Bank’s applications were interlocutory orders since the Resolutions did not dispose of the merits of the main case.

²⁷¹ 556 Phil. 178 (2007) [Per J. Chico-Nazario, Third Division].

²⁷² *Id.* at 188–189.

CA-G.R. CV No. 79732-MIN originated from Civil Case No. 28,170-2000, which involved the issues regarding the interest rates imposed by Philippine National Bank. Hence, the denial of Philippine National Bank's applications did not determine the issues on the interest rates imposed by Philippine National Bank.

The proper remedy for Philippine National Bank would have been to file a petition for certiorari under Rule 65 or, in the alternative, to await the outcome of the main case and file an appeal, raising the denial of its applications as an assignment of error.

In any case, we continue to resolve the arguments raised in G.R. No. 173194.

Philippine National Bank argues in its Petition for Review docketed as G.R. No. 173194 that its application to hold the injunction bond liable for damages was filed on time. It points out that the phrase "before the judgment becomes executory" found in Section 20²⁷³ of Rule 57 refers to the judgment in the main case, which, in this case, refers to CA-G.R. CV No. 79732.²⁷⁴

Philippine National Bank also argues that the Court of Appeals erred in denying its application to be appointed as receiver because although the Sheriff's Provisional Certificate of Sale was not registered, the Certificate of Sale "provides the basis for [Philippine National Bank] to claim ownership over the foreclosed properties."²⁷⁵ As the highest bidder, Philippine National Bank had the right to receive the rental income of the foreclosed properties.²⁷⁶

Spouses Limso and Davao Sunrise filed their Comment,²⁷⁷ countering that the Court of Appeals did not err in denying Philippine National Bank's applications to hold the injunction bond liable for damages and to be appointed as receiver.²⁷⁸ They cite *San Beda College v. Social Security System*,²⁷⁹ where this court ruled that "the claim for damages for wrongful

²⁷³ RULES OF COURT, Rule 57, sec. 20 provides:

SECTION 20. Claim for Damages on Account of Improper, Irregular or Excessive Attachment. — An application for damages on account of improper, irregular or excessive attachment must be filed before the trial or before appeal is perfected or before the judgment becomes executory, with due notice to the attaching party and his surety or sureties, setting forth the facts showing his right to damages and the amount thereof. Such damages may be awarded only after proper hearing and shall be included in the judgment on the main case[.]

²⁷⁴ *Rollo* (G.R. No. 173194), p. 65, Petition for Review. Note that CA-G.R. CV No. 79732 was subsequently re-docketed as CA-G.R. CV No. 79732-MIN.

²⁷⁵ *Id.* at 67.

²⁷⁶ *Id.* at 67–68.

²⁷⁷ *Id.* at 471–498.

²⁷⁸ *Id.* at 477–481.

²⁷⁹ 144 Phil. 143 (1970) [Per J. J.B.L. Reyes, En Banc].

issuance of injunction must be filed before the finality of the decree dissolving the questioned writ.”²⁸⁰

They highlight Philippine National Bank’s admission that the writ of preliminary injunction was dissolved in January 2002, and that the Decision²⁸¹ dissolving the writ attained finality on September 11, 2002.²⁸²

Spouses Limso and Davao Sunrise further point out that while CA-G.R. CV No. 79732 was still pending before the Court of Appeals, “the decree dissolving the questioned Writ of Preliminary Injunction had already become final.”²⁸³ Thus, Philippine National Bank filed its application out of time.²⁸⁴

They argue that in any case, Philippine National Bank cannot claim damages on the injunction bond since it was unable to secure a judgment in its favor in Civil Case No. 28,170-2000.²⁸⁵

They further argue that the Court of Appeals was correct in denying Philippine National Bank’s application to be appointed as receiver on the ground that Philippine National Bank is a party to the case and hence, it cannot be appointed as receiver.²⁸⁶

Spouses Limso and Davao Sunrise then allege that Philippine National Bank is guilty of forum shopping. They argue that Philippine National Bank’s ex-parte Petition for the issuance of a writ of possession, docketed as Other Case No. 124-2002, and the application to be appointed as receiver have the same purpose: to obtain possession of the properties.²⁸⁷

Philippine National Bank, through counsel, filed its Reply, countering that *San Beda College* was decided when the 1964 Rules of Court was still in effect.²⁸⁸ It argues that the cited case is no longer applicable because the 1964 Rules was superseded by the 1997 Rules of Civil Procedure.²⁸⁹ The applicable case is *Hanil Development Co., Ltd. v. Intermediate Appellate Court*,²⁹⁰ where this court ruled that “the judgment against the attachment bond could be included in the final judgment of the main case.”²⁹¹

²⁸⁰ *Rollo* (G.R. No. 173194), p. 479, Comment.

²⁸¹ This Decision refers to that in G.R. No. 152812.

²⁸² *Rollo* (G.R. No. 173194), pp. 478–479, Comment.

²⁸³ *Id.* at 480.

²⁸⁴ *Id.* at 480–481.

²⁸⁵ *Id.* at 481.

²⁸⁶ *Id.* at 488.

²⁸⁷ *Id.* at 492.

²⁸⁸ *Id.* at 666, Reply.

²⁸⁹ *Id.* at 667.

²⁹⁰ 228 Phil. 529 (1986) [Per J. Gutierrez, Jr., Second Division].

²⁹¹ *Rollo* (G.R. No. 173194), p. 667, Reply.

Philippine National Bank also argued that under the 1997 Rules of Civil Procedure, the applicant for damages does not have to be the winning party.²⁹²

Philippine National Bank further argues that it did not commit forum shopping since “there is no identity of parties between CA G.R. CV No. 79732 . . . and Other Case No. 124-2002.”²⁹³ The causes of action and reliefs sought in the two cases are different.²⁹⁴ It points out that its application to be appointed as receiver is a provisional remedy under Rule 59 of the 1997 Rules of Civil Procedure, while its prayer for the issuance of a writ of possession in Other Case No. 124-2002 is based on its right to possess the properties involved.²⁹⁵

We rule that the Court of Appeals properly denied Philippine National Bank’s application to hold the injunction bond liable for damages and be appointed as receiver. We also rule that no forum shopping was committed by Philippine National Bank. However, the Court of Appeals erred in ruling that Philippine National Bank filed its application to hold the injunction bond liable for damages out of time.

The Court of Appeals, in its Resolution dated March 2, 2006, explained:

Records show that when this Court annulled the RTC’s order of injunction, Davao Sunrise thereafter elevated the matter to the Supreme Court. On July 24, 2002, the Supreme Court denied its petition for having been filed out of time and an Entry of Judgment was issued on Sept[ember] 11, 2002.

PNB’s instant application however was filed only on February 17, 2005 and/or in the course of its appeal on the main case – about two (2) years and five (5) months after the judgment annulling the injunction order attained finality.

Clearly, despite that it already obtained a favorable judgment on the injunction matter, PNB failed to file (before the court *a quo*) an application for damages against the bond before judgment was rendered in the main case by the court *a quo*. Thus, even for this reason alone, Davao Sunrise and its bondsman are relieved of further liability thereunder.²⁹⁶ (Citations omitted)

The Petition referred to by the Court of Appeals in the quoted

²⁹² Id. at 671–674.

²⁹³ Id. at 683.

²⁹⁴ Id. at 684.

²⁹⁵ Id.

²⁹⁶ *Rollo* (G.R. No. 173194), pp. 79–80, Court of Appeals Resolution in CA-G.R. CV No. 79732. The injunction referred to is the writ of preliminary injunction issued in Civil Case No. 28,170-2000.

Resolution was docketed as G.R. No. 152812 and was entitled *Davao Sunrise Investment and Development Corporation, et al. v. Court of Appeals, et al.*²⁹⁷ G.R. No. 152812 originated from CA G.R. SP No. 63351.²⁹⁸ CA G.R. SP No. 63351 was a Petition for Certiorari filed by Philippine National Bank, which questioned the issuance of a writ of preliminary injunction in Civil Case No. 28,170-2000.²⁹⁹

In the Decision³⁰⁰ dated January 10, 2002, the Court of Appeals granted Philippine National Bank's Petition for Certiorari and held that:

In the case at bar, respondents' claim to a right to preliminary injunction based on PNB's purported unilateral imposition of interest rates and subsequent increases thereof, is not a right warranting the issuance of an injunction to halt the foreclosure proceedings. On the contrary, it is petitioner bank which has proven its right to foreclose respondents' mortgaged properties, especially since respondents have admitted their indebtedness to PNB and merely questioning the interest rates imposed by the bank. . . .

. . . .

Above all, the core and ultimate issue raised in the main case below is the interest stipulation in the loan agreements between the petitioner and private respondents, the validity of which is still to be determined by the lower court. Injunctive relief cannot be made to rest on the assumption that said interest stipulation is void as it would preempt the merits of the main case.

WHEREFORE, premises considered, the assailed Orders of respondent judge dated December 4 and 21, 2000 are hereby ANNULLED and SET ASIDE, and the Order dated November 20, 2000 denying private respondents prayer for the issuance of a writ of preliminary injunction is REINSTATED.

SO ORDERED.³⁰¹

Spouses Limso and Davao Sunrise assailed the Decision in CA-G.R. SP No. 63351 and filed before this court a Petition for Review, docketed as G.R. No. 152812. However, the Petition for Review was denied in the Resolution³⁰² dated July 24, 2002 for being filed out of time, and Entry of Judgment³⁰³ was made on September 11, 2002.

²⁹⁷ Id. at 216, Supreme Court Resolution.

²⁹⁸ Id. at 55–56, Petition for Review.

²⁹⁹ Id. at 201–202, Court of Appeals Decision in CA G.R. SP No. 63351.

³⁰⁰ Id. at 201–215. The Decision was penned by Associate Justice Salvador J. Valdez, Jr. (Chair) and concurred in by Associate Justices Mercedes Gozo-Dadole and Sergio L. Pestaño of the Fifteenth Division.

³⁰¹ Id. at 212–215, Court of Appeals Decision in CA G.R. SP No. 63351.

³⁰² Id. at 216–217.

³⁰³ Id. at 218.

The issuance of the writ of preliminary injunction in Civil Case No. 28,170-2000 was an interlocutory order, and was properly questioned by Philippine National Bank through a Petition for Certiorari.

However, the Court of Appeals erred in ruling that Philippine National Bank's application was filed out of time.

Section 20 of Rule 57 of the Rules of Civil Procedure provides:

SECTION 20. Claim for Damages on Account of Improper, Irregular or Excessive Attachment. — An application for damages on account of improper, irregular or excessive attachment must be filed before the trial or before appeal is perfected or before the judgment becomes executory, with due notice to the attaching party and his surety or sureties, setting forth the facts showing his right to damages and the amount thereof. Such damages may be awarded only after proper hearing and shall be included in the judgment on the main case.

If the judgment of the appellate court be favorable to the party against whom the attachment was issued, he must claim damages sustained during the pendency of the appeal by filing an application in the appellate court, with notice to the party in whose favor the attachment was issued or his surety or sureties, before the judgment of the appellate court becomes executory. The appellate court may allow the application to be heard and decided by the trial court.

Nothing herein contained shall prevent the party against whom the attachment was issued from recovering in the same action the damages awarded to him from any property of the attaching party not exempt from execution should the bond or deposit given by the latter be insufficient or fail to fully satisfy the award.

The judgment referred to in Section 20 of Rule 57 should mean the judgment in the main case. In *Carlos v. Sandoval*:³⁰⁴

Section 20 essentially allows the application to be filed at any time before the judgment becomes executory. It should be filed in the same case that is the main action, and cannot be instituted separately. It should be filed with the court having jurisdiction over the case at the time of the application. The remedy provided by law is exclusive and by failing to file a motion for the determination of the damages on time and while the judgment is still under the control of the court, the claimant loses his right to damages.³⁰⁵ (Citations omitted)

³⁰⁴ 508 Phil. 260 (2005) [Per J. Tinga, Second Division].

³⁰⁵ *Id.* at 277–278.

In this case, Philippine National Bank filed its application³⁰⁶ during the pendency of the appeal before the Court of Appeals. The application was dated January 12, 2005,³⁰⁷ while the appeal in the main case, docketed as CA-G.R. CV No. 79732-MIN, was decided on August 13, 2009.³⁰⁸ Hence, Philippine National Bank's application to hold the injunction bond liable for damages was filed on time.

The Court of Appeals properly denied Philippine National Bank's application to be appointed as a receiver.

Rule 59, Section 1 provides the grounds when a receiver may be appointed:

SECTION 1. Appointment of Receiver. — Upon a verified application, one or more receivers of the property subject of the action or proceeding may be appointed by the court where the action is pending, or by the Court of Appeals or by the Supreme Court, or a member thereof, in the following cases:

- (a) When it appears from the verified application, and such other proof as the court may require, that the party applying for the appointment of a receiver has an interest in the property or fund which is the subject of the action or proceeding, and that such property or fund is in danger of being lost, removed, or materially injured unless a receiver be appointed to administer and preserve it;
- (b) When it appears in an action by the mortgagee for the foreclosure of a mortgage that the property is in danger of being wasted or dissipated or materially injured, and that its value is probably insufficient to discharge the mortgage debt, or that the parties have so stipulated in the contract of mortgage;
- (c) After judgment, to preserve the property during the pendency of an appeal, or to dispose of it according to the judgment, or to aid execution when the execution has been returned unsatisfied or the judgment obligor refuses to apply his property in satisfaction of the judgment, or otherwise to carry the judgment into effect;
- (d) Whenever in other cases it appears that the appointment of a receiver is the most convenient and feasible means of preserving, administering, or disposing of the property in litigation.

³⁰⁶ *Rollo* (G.R. No. 173194), pp. 262–272.

³⁰⁷ *Id.* at 271.

³⁰⁸ *Rollo* (G.R. No. 196958), p. 98, Court of Appeals Decision in CA-G.R. CV No. 79732-MIN.

During the pendency of an appeal, the appellate court may allow an application for the appointment of a receiver to be filed in and decided by the court of origin and the receiver appointed to be subject to the control of said court.

*In Commodities Storage & Ice Plant Corporation v. Court of Appeals:*³⁰⁹

The general rule is that neither party to a litigation should be appointed as receiver without the consent of the other because a receiver should be a person indifferent to the parties and should be impartial and disinterested. The receiver is not the representative of any of the parties but of all of them to the end that their interests may be equally protected with the least possible inconvenience and expense.³¹⁰ (Citations omitted)

The Court of Appeals cited Spouses Limso and Davao Sunrise's objection to Philippine National Bank's application to be appointed as receiver as one of the grounds why the application should fail.³¹¹

Also, the Court of Appeals found that the mortgaged properties of Spouses Limso and Davao Sunrise were earning approximately ₱12,000,000.00 per month. This proves that the properties were being administered properly and did not require the appointment of a receiver. Also, to appoint Philippine National Bank as receiver would be premature since the trial court's Decision was pending appeal.³¹²

Philippine National Bank did not commit forum shopping when it filed an ex-parte Petition for the issuance of a writ of possession and an application for appointment as receiver.

The elements of forum shopping are:

- (a) identity of parties, or at least such parties as represent the same interests in both actions;
- (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and
- (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.³¹³ (Citation omitted)

³⁰⁹ 340 Phil. 551 (1997) [Per J. Puno, Second Division].

³¹⁰ Id. at 559.

³¹¹ *Rollo* (G.R. No. 173194), p. 33, Court of Appeals Resolution in CA-G.R. CV No. 79732.

³¹² Id. at 33–34.

³¹³ *Ortigas & Company Limited Partnership v. Velasco*, G.R. No. 109645, January 21, 2015 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/109645.pdf>> 39–40 [Per J. Leonen, Second Division].

There is no identity of parties because the party to the Petition for Issuance of Writ of Possession is Philippine National Bank only, while there are two parties to application for appointment as receiver: Philippine National Bank on one hand, and Spouses Limso and Davao Sunrise on the other.

The causes of action are also different. In the Petition for Issuance of Writ of Possession, Philippine National Bank prays that it be granted a writ of possession over the foreclosed properties because it is the winning bidder in the foreclosure sale.³¹⁴ On the other hand, Philippine National Bank's application to be appointed as receiver is for the purpose of preserving these properties pending the resolution of CA-G.R. CV No. 79732.³¹⁵ While the issuance of a writ of possession or the appointment as receiver would have the same result of granting possession of the foreclosed properties to Philippine National Bank, Philippine National Bank's right to possess these properties as the winning bidder in the foreclosure sale is different from its interest as creditor to preserve these properties.

II

There is no mutuality of contracts when the determination or imposition of interest rates is at the sole discretion of a party to the contract. Further, escalation clauses in contracts are void when they allow the creditor to unilaterally adjust the interest rates without the consent of the debtor.

The Petitions docketed as G.R. Nos. 196958 and 197120 assail the Decision in CA-G.R. CV No. 79732-MIN.³¹⁶

Philippine National Bank argues that the principle of mutuality of contracts was not violated because Spouses Limso and Davao Sunrise were notified as to the applicable interest rates, and their consent was obtained before the effectivity of the agreement.³¹⁷ There was no unilateral imposition of interest rates since the rates were dependent on the prevailing market rates.³¹⁸

Philippine National Bank also argues that Spouses Limso and Davao Sunrise were regularly informed by Philippine National Bank of the interest rates imposed on their loan, as shown by Robert Alan L. Limso's signatures

³¹⁴ *Rollo* (G.R. No. 173194), p. 682, Philippine National Bank's Reply.

³¹⁵ *Id.* at 337-340, Application for the Appointment of PNB as Receiver.

³¹⁶ *Rollo* (G.R. No. 196958), p. 13, Petition for Review; *rollo* (G.R. No. 197120), p. 4, Petition for Review.

³¹⁷ *Rollo* (G.R. No. 196958), p. 52, Petition for Review.

³¹⁸ *Id.* at 61.

on the letters sent by Philippine National Bank.³¹⁹

Philippine National Bank further argues that loan agreements with escalation clauses, by their nature, “would not indicate the exact rate of interest applicable to a loan precisely because it is made to depend by the parties to external factors such as market indicators and/or government regulations affecting the cost of money.”³²⁰

Philippine National Bank cites *Solidbank Corp., (now Metropolitan Bank and Trust Company) v. Permanent Homes, Incorporated*,³²¹ where this court held that “contracts with escalation clause do not violate the principle of mutuality of contracts.”³²²

Philippine National Bank contends that the Conversion, Restructuring and Extension Agreement novated the previous contracts with Spouses Limso and Davao Sunrise. In addition, the alleged infirmities in the previous contracts were set aside upon the execution of the Conversion, Restructuring and Extension Agreement.³²³

On the other hand, Spouses Limso and Davao Sunrise argue that the Court of Appeals did not err in ruling that the interest rates were imposed unilaterally. Spouses Limso and Davao Sunrise allege that the interest rates were not stipulated in writing, in violation of Article 1956 of the Civil Code.³²⁴ Also, the Court of Appeals did not err in reducing the penalties and attorney’s fees since Article 2227 of the Civil Code states:³²⁵

Article 2227. Liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable.

Spouses Limso and Davao Sunrise add that the letters sent by Philippine National Bank to Davao Sunrise were not agreements but mere notices that the interest rates were increased by Philippine National Bank.³²⁶ Moreover, the letters were received by Davao Sunrise’s employees who were not authorized to receive such letters.³²⁷ Some of the letters did not even appear to have been received by anyone at all.³²⁸

³¹⁹ Id. at 53–56.

³²⁰ Id. at 63.

³²¹ 639 Phil. 289 (2010) [Per J. Carpio, Second Division].

³²² *Rollo* (G.R. No. 196958), p. 71, Petition for Review.

³²³ Id. at 78–79.

³²⁴ Id. at 294, Comment.

³²⁵ Id. at 321–322.

³²⁶ Id. at 297–298.

³²⁷ Id. at 298–300.

³²⁸ Id. at 300–301.

Spouses Limso and Davao Sunrise allege that Philippine National Bank admitted that the penalties stated in the agreements were in the nature of liquidated damages.³²⁹ Nevertheless, Spouses Limso and Davao Sunrise question the Court of Appeals' ruling insofar as it held that their remaining obligation to Philippine National Bank is ₱803,185,411.11 as of September 1, 2008. According to Spouses Limso and Davao Sunrise, they have overpaid Philippine National Bank in the amount of ₱15,915,588.89.³³⁰

Philippine National Bank counters that Davao Sunrise and Spouses Limso's promissory notes had a provision stating:

[T]he rate of interest shall be set at the start of every Interest Period. For this purpose, I/We agree that the rate of interest herein stipulated may be increased or decreased for the subsequent Interest Periods, with **PRIOR NOTICE TO THE BORROWER** in the event of changes in the interest rate prescribed by law or the Monetary Board of Central Bank of the Philippines or in the Bank's overall cost of funds. I/We hereby agree that **IN THE EVENT I/WE ARE NOT AGREEABLE TO THE INTEREST RATE FIXED FOR ANY INTEREST PERIOD, I/WE HAVE THE OPTION TO PREPAY THE LOAN OR CREDIT FACILITY WITHOUT PENALTY** within ten (10) calendar days from the Interest Setting Date.³³¹ (Emphasis in the original)

As to the letters sent by Philippine National Bank, these letters were received by the Chief Finance Officer, Chairman, and President of Davao Sunrise. In addition, assuming that the employees who allegedly received the letters were not authorized to do so, the unauthorized acts were ratified by Spouses Limso and Davao Sunrise when they used the proceeds of the loan.³³²

We rule that there was no mutuality of contract between the parties since the interest rates imposed were based on the sole discretion of Philippine National Bank.³³³ Further, the escalation clauses in the real estate mortgage "[did] not specify a fixed or base interest[.]"³³⁴ Thus, the interest rates are invalid.

The principle of mutuality of contracts is stated in Article 1308 of the Civil Code as follows:

³²⁹ Id. at 322.

³³⁰ Id. at 292.

³³¹ Id. at 365, Reply.

³³² Id. at 367–368.

³³³ Id. at 304, Comment.

³³⁴ Id. at 314.

Article 1308. The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them.

The importance of the principle of mutuality of contracts was discussed in *Juico v. China Banking Corporation*:³³⁵

The binding effect of any agreement between parties to a contract is premised on two settled principles: (1) that any obligation arising from contract has the force of law between the parties; and (2) that there must be mutuality between the parties based on their essential equality. Any contract which appears to be heavily weighed in favor of one of the parties so as to lead to an unconscionable result is void. Any stipulation regarding the validity or compliance of the contract which is left solely to the will of one of the parties, is likewise, invalid.³³⁶ (Citation omitted)

When there is no mutuality between the parties to a contract, it means that the parties were not on equal footing when the terms of the contract were negotiated. Thus, the principle of mutuality of contracts dictates that a contract must be rendered void when the execution of its terms is skewed in favor of one party.³³⁷

The Court of Appeals also noted that since the interest rates imposed were at the sole discretion of Philippine National Bank, and that Spouses Limso and Davao Sunrise were merely notified when there were changes in the interest rates, Philippine National Bank violated the principle of mutuality of contracts.³³⁸ The Court of Appeals ruled that:

We cannot subscribe to appellant bank's allegation that plaintiffs-appellees agreed to these interest rates by receiving various letters from PNB. Those letters cannot be construed as agreements as a simple reading of those letters would show that they are mere notices informing plaintiffs-appellees that the bank, through its top management, had already imposed interest rates on their loan. The uniform wordings of the said letters go this way:

This refers to your existing credit facility in the principal amount of P850.0 MM granted by the Philippine National Bank by and under the terms and conditions of that Credit Agreement dated 12.2.97 (Renewal of Credit Facility).

We wish to advise you that the top management has approved an interest rate of 20.756% which will be used in computing the interest due on your existing peso and

³³⁵ G.R. No. 187678, April 10, 2013, 695 SCRA 520 [Per J. Villarama, Jr., First Division].

³³⁶ Id. at 531.

³³⁷ *Allied Banking Corporation v. Court of Appeals*, 348 Phil. 382, 390 (1998) [Per J. Bellosillo, First Division].

³³⁸ *Rollo* (G.R. No. 196958), p. 113, Court of Appeals Decision in CA-G.R. CV No. 79732-MIN.

redenominated availments against the credit facility for the period July 20 to August 19, 1998.

If you are amenable to this arrangement, please signify your conformity on the space provided below and return to us the original copy of the document. If we receive no written objection by the end of 10 days from date of receipt of this letter, we will take it to mean that you agree to the new interest rate we quote. On the other hand, if you disagree with the quoted rate, you will have to pay the loan in full within the same ten-day period otherwise, the entire loan will be considered due and demandable.³³⁹ (Citation omitted)

The contents of the letter quoted by the Court of Appeals show that there was no room for negotiation among Philippine National Bank, Spouses Limso, and Davao Sunrise when it came to the applicable interest rate. Since there was no room for negotiations between the parties with regard to the increases of the rates of interest, the principle of mutuality of contracts was violated. There was no meeting of the minds between Spouses Limso, Davao Sunrise, and Philippine National Bank because the increases in the interest rates were imposed on them unilaterally.

Meeting of the minds between parties to a contract is manifested when the elements of a valid contract are all present.³⁴⁰ Article 1318 of the Civil Code provides:

Article 1318. There is no contract unless the following requisites concur:

- (1) Consent of the contracting parties;
- (2) Object certain which is the subject matter of the contract;
- (3) Cause of the obligation which is established.

When one of the elements is wanting, no contract can be perfected.³⁴¹ In this case, no consent was given by Spouses Limso and Davao Sunrise as to the increase in the interest rates. Consequently, the increases in the interest rates are not valid.

³³⁹ Id. at 121–122.

³⁴⁰ *Clemente v. Court of Appeals*, G.R. No. 175483, October 14, 2015 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/october2015/175483.pdf>> 7 [Per J. Jardeleza, Third Division]. See also *Heirs of Spouses Intac v. Court of Appeals, et al.*, 697 Phil. 373, 383 (2012) [Per J. Mendoza, Third Division].

³⁴¹ *Clemente v. Court of Appeals*, G.R. No. 175483, October 14, 2015 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/october2015/175483.pdf>> 7 [Per J. Jardeleza, Third Division].

Even the promissory notes contained provisions granting Philippine National Bank the sole discretion to set the interest rate:

[Promissory Note] NO. 0015138516350115 . . .

. . . .

. . . I/We, jointly and severally, promise to pay to the order of the Philippine National Bank (the 'Bank') at its office in cm recto avenue davao city [sic], Philippines, the sum of PHILIPPINE PESOS: 583,183,333.34 (P583,183,333.34) together with interest thereon for the current Interest Period *at a rate of to be set by mgt.* [management]. Interest Period shall mean the period commencing on the date hereof and having a duration not exceeding monthly (____) days and each similar period thereafter commencing upon the expiry of the immediately preceding Interest Period. The rate of interest shall be set at the start of every Interest Period. For this purpose, I/We agree that the rate of interest herein stipulated may be increased or decreased for the subsequent Interest Periods, with prior notice to the Borrower in the event of changes in interest rate prescribed by law or the Monetary Board of the Central Bank of the Philippines, or in the Bank's overall cost of funds. I/We hereby agree that in the event I/We are not agreeable to the interest rate fixed for any Interest Period, I/we shall have the option to prepay the loan or credit facility without penalty within ten (10) calendar days from the Interest Setting Date.³⁴²

Promissory Note No. 0015138516350116³⁴³ contained the same provisions, differing only as to the amount of the obligation.

Assuming that Davao Sunrise and Spouses Limso agreed to the increase in interest rates, the interest rates are still null and void for being unreasonable.³⁴⁴

This court has held that while the Usury Law was suspended by Central Bank Circular No. 905, Series of 1982, unconscionable interest rates may be declared illegal.³⁴⁵ The suspension of the Usury Law did not give creditors an unbridled right to impose arbitrary interest rates. To determine whether an interest rate is unconscionable, we are guided by the following pronouncement:

In determining whether the rate of interest is unconscionable, the mechanical application of pre-established floors would be wanting. The lowest rates that have previously been considered unconscionable need not be an impenetrable minimum. What is more crucial is a consideration of

³⁴² *Rollo* (G.R. No. 173194), p. 102.

³⁴³ *Id.* at 103.

³⁴⁴ *Rollo* (G.R. No. 196958), p. 320, Comment.

³⁴⁵ *Spouses Castro v. Tan, et al.*, 620 Phil. 239, 247 (2009) [Per J. Del Castillo, Second Division].

the parties' contexts. Moreover, interest rates must be appreciated in light of the fundamental nature of interest as compensation to the creditor for money lent to another, which he or she could otherwise have used for his or her own purposes at the time it was lent. It is not the default vehicle for predatory gain. As such, interest need only be reasonable. It ought not be a supine mechanism for the creditor's unjust enrichment at the expense of another.³⁴⁶

A reading of the interest provisions in the original agreement and the Conversion, Restructuring and Extension Agreement shows that the interest rates imposed by Philippine National Bank were usurious and unconscionable.

In the original credit and loan agreements executed in 1993, the interest provisions provide:

CREDIT AGREEMENT

. . . .

1.04 Interest on Availments. (a) The Borrowers agree to pay interest on each availment from date of each availment up to, but not including the date of full payment thereof *at a rate per annum that is determined by the Bank* to be equivalent to the Bank's prime rate less 1.0% in effect as of the date of the relevant Availment, subject to quarterly review and to maintenance of deposits with ADB of at least 5% of the amount availed in its savings and current account. Non compliance of ADB requirement shall subject the credit line to regular interest rate which is the prime rate plus applicable spread.³⁴⁷

LOAN AGREEMENT

. . . .

1.03 Interest. (a) The Borrowers hereby agree to pay interest on the loan from the date of Drawdown up to Repayment Date *at the rate that is determined by the Bank* to be the Bank's prime rate in effect at the Date of Drawdown less 1.0% and which shall be reset every 90 days to coincide with interest payments.

(b) The determination by the Bank of the amount of interest due and payable hereunder shall be conclusive and binding on the borrower in the absence of manifest error in the computation.³⁴⁸
(Emphasis supplied, underscoring in the original)

³⁴⁶ *Spouses Abella v. Spouses Abella*, G.R. No. 195166, July 8, 2015 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/195166.pdf>> 12 [Per J. Leonen, Second Division].

³⁴⁷ *Rollo* (G.R. No. 197120), pp. 139–140, Credit Agreement.

³⁴⁸ *Id.* at 143–144, Loan Agreement.

In the Conversion, Restructuring and Extension Agreement, the interest provisions state:

SECTION 2. TERMS OF LOAN I

....

2.04 Interest. (a) The Borrowers agree to pay the Bank interest on Loan I from the Effective Date, until the date of full payment thereof at the rate per annum *to be set by the Bank*. The interest rate *shall be reset by the Bank every month*.

....

SECTION 3. TERMS OF LOAN II

....

3.04 Interest. (a) The Borrowers agree to pay the Bank interest on Loan II from the Effective Date, until the date of full payment thereof at the rate per annum *to be set by the Bank*. The interest rate shall *be reset by the Bank every month*.³⁴⁹ (Emphasis supplied, underscoring in the original)

From the terms of the loan agreements, there was no way for Spouses Limso and Davao Sunrise to determine the interest rate imposed on their loan because it was always at the discretion of Philippine National Bank.

Nor could Spouses Limso and Davao Sunrise determine the exact amount of their obligation because of the frequent changes in the interest rates imposed.

As found by the Court of Appeals, the loan agreements merely stated that interest rates would be imposed. However, the specific interest rates were not stipulated, and the subsequent increases in the interest rates were all at the discretion of Philippine National Bank.³⁵⁰

Also invalid are the escalation clauses in the real estate mortgage and promissory notes. The escalation clause in the real estate mortgage states:

“(k) INCREASE OF INTEREST RATE:

“The rate of interest charged on the obligation secured by this mortgage as well as the interest on the amount which may have been advanced by the mortgagee, in accordance with the provisions hereof shall be subject during the life of this contract to

³⁴⁹ Id. at 181, Conversion, Restructuring and Extension Agreement.

³⁵⁰ *Rollo* (G.R. No. 196958), p. 118, Court of Appeals Decision in CA-G.R. CV No. 79732-MIN.

such an increase within the rate allowed by law, as the Board of Directors of the MORTGAGEE may prescribe for its debtors.”³⁵¹

The escalation clause in the promissory notes³⁵² states:

For this purpose, I/We agree that the rate of interest herein stipulated may be increased or decreased for the subsequent Interest Periods, with prior notice to the Borrower in the event of changes in interest rate prescribed by law or the Monetary Board or the Central Bank of the Philippines, or in the Bank’s overall cost of funds.³⁵³

*Banco Filipino Savings and Mortgage Bank v. Judge Navarro*³⁵⁴ defined an escalation clause as “one which the contract fixes a base price but contains a provision that in the event of specified cost increases, the seller or contractor may raise the price up to a fixed percentage of the base.”³⁵⁵

This court has held that escalation clauses are not always void since they serve “to maintain fiscal stability and to retain the value of money in long term contracts.”³⁵⁶ However:

[A]n escalation clause “which grants the creditor an unbridled right to adjust the interest independently and upwardly, completely depriving the debtor of the right to assent to an important modification in the agreement” is void. A stipulation of such nature violates the principle of mutuality of contracts. Thus, this Court has previously nullified the unilateral determination and imposition by creditor banks of increases in the rate of interest provided in loan contracts.

....

. . . [W]e hold that the escalation clause is . . . void because it grants respondent the power to impose an increased rate of interest without a written notice to petitioners and their written consent. Respondent’s monthly telephone calls to petitioners advising them of the prevailing interest rates would not suffice. A detailed billing statement based on the new imposed interest with corresponding computation of the total debt should have been provided by the respondent to enable petitioners to make an informed decision. An appropriate form must also be signed by the petitioners to indicate their conformity to the new rates. Compliance with these requisites is essential to preserve the mutuality of contracts. For indeed, one-sided impositions do not

³⁵¹ Id. at 313–314, Comment.

³⁵² Id. at 314. The promissory notes are dated January 5, 1999.

³⁵³ Id.

³⁵⁴ 236 Phil. 370 (1987) [Per J. Melencio-Herrera, En Banc].

³⁵⁵ *Rollo* (G.R. No. 196958), p. 313, Comment.

³⁵⁶ *Juico v. China Banking Corporation*, G.R. No. 187678, April 10, 2013, 695 SCRA 520, 531 [Per J. Villarama, Jr., First Division].

have the force of law between the parties, because such impositions are not based on the parties' essential equality.³⁵⁷ (Citations omitted)

The interest rate provisions in Philippine National Bank's loan agreements and real estate mortgage contracts have been nullified by this court in several cases. Even the escalation clauses in Philippine National Bank's contracts were noted to be violative of the principle of mutuality of contracts.³⁵⁸

The original loan agreement in this case was executed in 1993. Prior to the execution of the original loan agreement, this court promulgated a Decision in 1991 ruling that "the unilateral action of the [Philippine National Bank] in increasing the interest rate on the private respondent's loan, violated the mutuality of contracts ordained in Article 1308 of the Civil Code[.]"³⁵⁹

In *Philippine National Bank v. Court of Appeals*,³⁶⁰ the interest rate provisions were nullified because these allowed Philippine National Bank to unilaterally increase the interest rate.³⁶¹ The nullified interest rate provisions were worded as follows:

"The Credit Agreement provided *inter alia*, that—

'(a) The BANK reserves the right to increase the interest rate within the limits allowed by law at any time depending on whatever policy it may adopt in the future: Provided, that the interest rate on this accommodation shall be correspondingly decreased in the event that the applicable maximum interest is reduced by law or by the Monetary Board. In either case, the adjustment in the interest rate agreed upon shall take effect on the effectivity date of the increase or decrease in the maximum interest rate.'

"The Promissory Note, in turn, authorized the PNB to raise the rate of interest, at any time without notice, beyond the stipulated rate of 12% but only 'within the limits allowed by law.'

The Real Estate Mortgage contract likewise provided that—

³⁵⁷ Id. at 531–539.

³⁵⁸ *Philippine National Bank v. Court of Appeals*, 273 Phil. 789, 798–799 (1991) [Per J. Griño-Aquino, First Division]; *Philippine National Bank v. Court of Appeals*, G.R. No. 107569, November 8, 1994, 238 SCRA 20, 26 [Per J. Puno, Second Division]; *Philippine National Bank v. Court of Appeals*, 328 Phil. 54, 60–61 (1996) [Per J. Mendoza, Second Division]; *Philippine National Bank v. Manalo*, G.R. No. 174433, February 24, 2014, 717 SCRA 254, 269–270 [Per J. Bersamin, First Division]; *Silos v. Philippine National Bank*, G.R. No. 181045, July 2, 2014, 728 SCRA 617, 643–655 [Per J. Del Castillo, Second Division].

³⁵⁹ *Philippine National Bank v. Court of Appeals*, 273 Phil. 789, 798 (1991) [Per J. Griño-Aquino, First Division].

³⁶⁰ G.R. No. 107569, November 8, 1994, 238 SCRA 20 [Per J. Puno, Second Division].

³⁶¹ Id. at 26–27.

‘(k) INCREASE OF INTEREST RATE: The rate of interest charged on the obligation secured by this mortgage as well as the interest on the amount which may have been advanced by the MORTGAGEE, in accordance with the provision hereof, shall be subject during the life of this contract to such an increase within the rate allowed by law, as the Board of Directors of the MORTGAGEE may prescribe for its debtors.’³⁶²

This court explained that:

Similarly, contract changes must be made with the consent of the contracting parties. The minds of all the parties must meet as to the proposed modification, especially when it affects an important aspect of the agreement. In the case of loan contracts, it cannot be gainsaid that the rate of interest is always a vital component, for it can make or break a capital venture. Thus, any change must be mutually agreed upon, otherwise, it is bereft of any binding effect.³⁶³

In a subsequent case³⁶⁴ also involving Philippine National Bank, this court likewise nullified the interest rate provisions of Philippine National Bank and discussed:

In this case no attempt was made by PNB to secure the conformity of private respondents to the successive increases in the interest rate. Private respondents’ assent to the increases cannot be implied from their lack of response to the letters sent by PNB, informing them of the increases. For as stated in one case, no one receiving a proposal to change a contract is obliged to answer the proposal.³⁶⁵ (Citation omitted)

However, only the interest rate imposed is nullified; hence, it is deemed not written in the contract. The agreement on payment of interest on the principal loan obligation remains. It is a basic rule that a contract is the law between contracting parties.³⁶⁶ In the original loan agreement and the Conversion, Restructuring and Extension Agreement, Spouses Limso and Davao Sunrise agreed to pay interest on the loan they obtained from Philippine National Bank. Such obligation was not nullified by this court. Thus, their obligation to pay interest in their loan obligation subsists.³⁶⁷

³⁶² Id. at 22.

³⁶³ Id. at 26.

³⁶⁴ *Philippine National Bank v. Court of Appeals*, 328 Phil. 54, 63 (1996) [Per J. Mendoza, Second Division]. In this case, the assailed interest rate provision in the real estate mortgage stated:

“(k) INCREASE OF INTEREST RATE:

The rate of interest charged on the obligation secured by this mortgage as well as the interest on the amount which may have been advanced by the MORTGAGEE, in accordance with the provision hereof, shall be subject during the life of this contract to such an increase within the rate allowed by law, as the Board of Directors of the MORTGAGEE may prescribe for its debtors” (Id. at 57).

³⁶⁵ Id. at 63.

³⁶⁶ *Mallari v. Prudential Bank (now Bank of the Philippine Islands)*, G.R. No. 197861, June 5, 2013, 697 SCRA 555, 566 [Per J. Peralta, Third Division].

³⁶⁷ *See Andal v. Philippine National Bank*, G.R. No. 194201, November 27, 2013, 711 SCRA 15, 28 [Per J. Perez, Second Division].

*Spouses Abella v. Spouses Abella*³⁶⁸ involved a simple loan with an agreement to pay interest. Unfortunately, the applicable interest rate was not stipulated by the parties. This court discussed that in cases where the parties fail to specify the applicable interest rate, the legal rate of interest applies. This court also discussed that the applicable legal rate of interest shall be the prevailing rate at the time when the agreement was entered into:³⁶⁹

This is so because interest in this respect is used as a surrogate for the parties' intent, as expressed as of the time of the execution of their contract. In this sense, the legal rate of interest is an affirmation of the contracting parties' intent; that is, by their contract's silence on a specific rate, the then prevailing legal rate of interest shall be the cost of borrowing money. This rate, which by their contract the parties have settled on, is deemed to persist regardless of shifts in the legal rate of interest. Stated otherwise, the legal rate of interest, when applied as conventional interest, shall always be the legal rate at the time the agreement was executed and shall not be susceptible to shifts in rate.³⁷⁰

Further, *Spouses Abella* cited Article 2212³⁷¹ of the Civil Code and the ruling in *Nacar v. Gallery Frames*,³⁷² which both state that "interest due shall itself earn legal interest from the time it is judicially demanded."³⁷³

[T]he interest due on conventional interest shall be at the rate of 12% per annum from [date of judicial demand] to June 30, 2013. Thereafter, or starting July 1, 2013, this shall be at the rate of 6% per annum.³⁷⁴

In this case, the Conversion, Restructuring and Extension Agreement was executed on January 28, 1999. Thus, the applicable interest rate on the principal loan obligation (conventional interest) is at 12% per annum. With regard to the interest due on the conventional interest, judicial demand was

³⁶⁸ G.R. No. 195166, July 8, 2015 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/195166.pdf>> [Per J. Leonen, Second Division].

³⁶⁹ Id. at 10.

³⁷⁰ Id. The term "conventional interest" was defined in the case as "interest as the cost of borrowing money" (Id. at 7).

³⁷¹ CIVIL CODE, art. 2212 provides:

Article 2212. Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point.

³⁷² G.R. No. 189871, August 13, 2013, 703 SCRA 439 [Per J. Peralta, En Banc], specifically: "1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% *per annum* to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code" (Id. at 457-458).

³⁷³ *Spouses Abella v. Spouses Abella*, G.R. No. 195166, July 8, 2015 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/195166.pdf>> 13 [Per J. Leonen, Second Division].

³⁷⁴ Id.

made on August 21, 2000 when Philippine National Bank filed a Petition³⁷⁵ for Extrajudicial Foreclosure of Real Estate Mortgage.³⁷⁶ Thus, from August 21, 2000 to June 30, 2013, the interest rate on conventional interest shall be at 12%. From July 1, 2013 until full payment, the applicable interest rate on conventional interest shall be at 6%.

III

The Conversion, Restructuring and Extension Agreement novated the original agreement executed in 1993. However, the nullified interest rate provisions in the original loan agreement cannot be deemed as having been legitimized, ratified, or set aside.

Philippine National Bank argues that the Conversion, Restructuring and Extension Agreement novated the original loan agreement and that the novation effectively set aside the infirmities in the original loan agreement.³⁷⁷

The Civil Code provides that:

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

Novation has been defined as:

Novation may either be express, when the new obligation declares in unequivocal terms that the old obligation is extinguished, or implied, when the new obligation is on every point incompatible with the old one. The test of incompatibility lies on whether the two obligations can stand together, each one with its own independent existence.

For novation, as a mode of extinguishing or modifying an obligation, to apply, the following requisites must concur:

- 1) There must be a previous valid obligation.
- 2) The parties concerned must agree to a new contract.
- 3) The old contract must be extinguished.

³⁷⁵ *Rollo* (G.R. No. 173194), pp. 106–112.

³⁷⁶ *Id.* at 52, Petition for Review.

³⁷⁷ *Rollo* (G.R. No. 196958), pp. 78–79, Petition for Review.

- 4) There must be a valid new contract.³⁷⁸ (Citations omitted)

The original Credit Agreement³⁷⁹ was executed on September 1, 1993,³⁸⁰ while the Conversion, Restructuring and Extension Agreement³⁸¹ was executed on January 28, 1999.³⁸²

Pertinent portions of the Conversion, Restructuring and Extension Agreement state:

WITNESSETH: That –

....

WHEREAS, *the Borrowers* [referring to DSIDC and spouses Limso] *acknowledge that they have outstanding obligations* (the “Obligations”) with the Bank broken down as follows:

(i) Credit Line – ₱583.18 Million (as of September 30, 1998);

(i i) Loan – ₱266.67 Million (as of September 30, 1998); and

(i i i) Interest – ₱217.15 Million (as of December 31, 1998);

WHEREAS, *at the request of the Borrowers*, the Bank has approved (a) the conversion and restructuring of the Credit Line portion of the Obligations into a term loan, (b) the extension of the term of the Loan for another four (4) years, (c) the capitalization on accrued interest (up to December 31, 1998) on the Obligations, (d) the waiver of the penalties charges (if any) accruing on the Obligations, and (e) the partial release of chattel mortgage on stock inventories, subject to the terms and conditions hereinafter set forth;

....

SECTION 2. TERMS OF LOAN I

2.01 Amount of Loan I. Loan I shall be in the principal amount not exceeding PESOS: FIVE HUNDRED EIGHTY THREE MILLION ONE HUNDRED EIGHTY THOUSAND (₱583,180,000.00)

....

SECTION 3. TERMS OF LOAN II

³⁷⁸ *St. James College of Parañaque, et al. v. Equitable PCI Bank*, 641 Phil. 452, 462 (2010) [Per J. Velasco, Jr., First Division].

³⁷⁹ *Rollo* (G.R. No. 205463), pp. 221–224.

³⁸⁰ *Id.* at 223.

³⁸¹ *Id.* at 272–277.

³⁸² *Id.* at 276.

3.01 Amount of Loan II. Loan II shall be in the principal amount not exceeding PESOS: FOUR HUNDRED EIGHTY THREE MILLION SEVEN HUNDRED EIGHTY THOUSAND (₱483,780,000.00).³⁸³

In this case, the previous valid obligation of Spouses Limso and Davao Sunrise was the payment of a loan in the total amount of ₱700 million, plus interest.

Upon the request of Spouses Limso and Davao Sunrise, Philippine National Bank agreed to restructure the original loan agreement.³⁸⁴

Philippine National Bank summarized the Conversion, Restructuring and Extension Agreement as follows:

- (a) The conversion of the Revolving Credit Line into a Term Loan in the principal amount of 583.18 Million and denominated as “Loan I”.
- (b) The Extension for another four (4) years of the original long term loan (from 01 September 2001 to 31 December 2005);
- (c) The capitalization of the accrued interest on both the Revolving Credit Line and the Long Term Loan up to 31 December 1998;
- (d) The consolidation of the accrued interest and the outstanding obligation of the original Long Term Loan to form “Loan 2” with the total principal amount of P483.82 Million;
- (e) Waiver of penalty charges;
- (f) Partial release of chattel mortgage on the stock inventories;
- (g) Both “Loan I” and “Loan II” were made payable within seven (7) years in monthly amortization and a balloon payment on or before December 2005.³⁸⁵

When the loan agreement was restructured, the principal obligation of Spouses Limso and Davao Sunrise became ₱1.067 billion.

The Conversion, Restructuring and Extension Agreement novated the original credit agreement because the principal obligation itself changed.

Important provisions of the original agreement were altered. For example, the penalty charges were waived and the terms of payment were extended.

³⁸³ Id. at 272–273.

³⁸⁴ *Rollo* (G.R. No. 196958), p. 105, Court of Appeals Decision in CA-G.R. CV No. 79732-MIN.

³⁸⁵ Id. at 34, Petition for Review.

Further, the preambular clauses of the Conversion, Restructuring and Extension Agreement show that Spouses Limso and Davao Sunrise sought to change the terms of the original agreement and that they themselves acknowledged their obligation to be ₱1.067 billion. They are now estopped from claiming that their obligation should be based on the original agreement when it was through their own actions that the loan was restructured.

Thus, the Court of Appeals in CA-G.R. CV No. 79732-MIN erred in not declaring that the Conversion, Restructuring and Extension Agreement novated the original agreement and in computing Spouses Limso and Davao Sunrise's obligation based on the original agreement.

Since the Conversion, Restructuring and Extension Agreement novated the original credit agreement, we modify the Court of Appeals Decision in that the outstanding obligation of Spouses Limso and Davao Sunrise should be computed on the basis of the Conversion, Restructuring and Extension Agreement.

In the Court of Appeals Decision dated August 13, 2009:

Computing the interest at 12% per annum on the principal amount of 700 Million Pesos, the interest should be 84 Million Pesos per annum. Multiplying 84 Million Pesos by 15 years from September 1, 1993 to September 1, 2008, the interest for the 15-year period would be One Billion Two Hundred Sixty Million Pesos (P1,260,000,000.00). Then, by adding the interest of P1,260,000,000.00 to the principal amount of 700 Million Pesos, the total obligation of plaintiffs-appellees would be One Billion Nine Hundred Sixty Million Pesos (P1,960,000,000.00) by September 1, 2008. And since plaintiffs-appellees has paid a total amount of One Billion One Hundred Fifty Six Million Eight Hundred Fourteen Thousand Five Hundred Eighty Eight Pesos and 89/100 (P1,156,814,588.89) to appellant PNB as of December 5, 1998, as per PNB's official computation of payments per official receipts, then, plaintiffs-appellees would still have an outstanding balance of about Eight Hundred Three Million One Hundred Eighty Five Thousand Four Hundred Eleven and 11/100 Pesos (P 803,185,411.11) as of September 1, 2008. The amount of P 803,185,411.11 will earn interest at the legal rate of 12% per annum from September 1, 2008 until fully paid.

.....

WHEREFORE, the assailed Decision dated June 19, 2002 and Order dated August 13, 2002 of the Regional Trial Court of Davao City, Branch 17 in Civil Case No. 28,170-2000 declaring the unilateral imposition of interest rates by defendant-appellant PNB as null and void appealed from are **AFFIRMED with the MODIFICATION** that the obligation of plaintiffs-appellees arising from the Loan and Revolving Credit Line and subsequent *Conversion, Restructuring and Extension Agreement* as Loan I and Loan II shall earn interest at the legal rate of

twelve percent (12%) per annum computed from September 1, 1993, until fully paid and satisfied.

SO ORDERED.³⁸⁶

Notably, in the body of the Court of Appeals Decision, Spouses Limso and Davao Sunrise's obligation was computed on the basis of the original loan agreement, while in the dispositive portion, the Court of Appeals cited both the original loan agreement and the Conversion, Restructuring and Extension Agreement.

The general rule is that:

Where there is a conflict between the dispositive part and the opinion of the court contained in the text or body of the decision, the former must prevail over the latter on the theory that the dispositive portion is the final order, while the opinion is merely a statement ordering nothing.³⁸⁷ (Citation omitted)

To avoid confusion, we also rule that the interest rate provisions and the escalation clauses in the Conversion, Restructuring and Extension Agreement are nullified insofar as they allow Philippine National Bank to unilaterally determine and increase the imposable interest rates.

Article 1409³⁸⁸ of the Civil Code provides that void contracts cannot be ratified. Hence, the void interest rate provisions in the original loan agreement could not have been ratified by the execution of the Conversion, Restructuring and Extension Agreement.

IV

The proper remedy to assail a decision on pure questions of law is to

³⁸⁶ Id. at 125–127, Court of Appeals Decision in CA-G.R. CV No. 79732-MIN.

³⁸⁷ *PH Credit Corporation v. Court of Appeals*, 421 Phil. 821, 833 (2001) [Per J. Panganiban, Third Division].

³⁸⁸ CIVIL CODE, art. 1409 provides:

Article 1409. The following contracts are inexistent and void from the beginning:

- (1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;
- (2) Those which are absolutely simulated or fictitious;
- (3) Those whose cause or object did not exist at the time of the transaction;
- (4) Those whose object is outside the commerce of men;
- (5) Those which contemplate an impossible service;
- (6) Those where the intention of the parties relative to the principal object of the contract cannot be ascertained;
- (7) Those expressly prohibited or declared void by law.

These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.

file a petition for review on certiorari under Rule 45, not an appeal under Rule 41 of the 1997 Rules of Civil Procedure.

One of the issues raised by Philippine National Bank in G.R. No. 205463 is the dismissal of its appeal under Rule 41 by the Court of Appeals in its Decision dated January 21, 2013.³⁸⁹

Philippine National Bank, through counsel, argues that Rule 41 is the proper remedy because its Petition raises questions of fact and of law.³⁹⁰ For example, the issue of whether there is an annotation of encumbrance on the titles of the mortgaged properties is a question of fact.³⁹¹

Denying Philippine National Bank's appeal under Rule 41, the Court of Appeals stated that:

[Philippine National Bank] simply takes issue against the conclusions made by the court a quo which pertains to the matter of whether mere entry in the Primary Entry Book, sans the signature of the registrar, already completes registration. It does not question the weight and probative value of the fact that the signature of Atty. Patriarcha [sic] was previously entered in the records then revoked by her. What PNB seeks, therefore, is a review of the decision of the court a quo dismissing its petition, without delving into the weight of the evidence, but on the correctness of the court a quo's conclusions based on the evidence presented before it. This is clearly a question of law.

.....

To the mind of this Court, PNB seeks to harp repeatedly on the issue of the court a quo's failure to consider that the certificate of sale has been duly registered on February 4, 2002 upon mere entry in the Primary Entry Book, even without the signature of the then register of deeds. Though couched in different creative presentations, all the errors assigned by PNB point to one vital question: *What completes registration?* To answer it, this Court is not asked to calibrate the evidence presented, or gauge the truth or falsity, but to apply the appropriate law to the situation. This is clearly a question of law.³⁹² (Emphasis in the original)

In *Land Bank of the Philippines v. Yatco Agricultural Enterprises*,³⁹³ this court discussed the difference between questions of law and questions of fact:

As a general rule, the Court's jurisdiction in a Rule 45 petition is limited to the review of pure questions of law. A question of law arises

³⁸⁹ *Rollo* (G.R. No. 205463), p. 25, Petition for Review on Certiorari.

³⁹⁰ *Id.* at 25–26.

³⁹¹ *Id.* at 30.

³⁹² *Id.* at 64–65, Court of Appeals Decision in CA-G.R. CV No. 01464-MIN.

³⁹³ G.R. No. 172551, January 15, 2014, 713 SCRA 370 [Per J. Brion, Second Division].

when the doubt or difference exists as to what the law is on a certain state of facts. Negatively put, Rule 45 does not allow the review of questions of fact. A question of fact exists when the doubt or difference arises as to the truth or falsity of the alleged facts.

The test in determining whether a question is one of law or of fact is “whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law[.]” Any question that invites calibration of the whole evidence, as well as their relation to each other and to the whole, is a question of fact and thus proscribed in a Rule 45 petition.³⁹⁴ (Citations omitted)

Based on the foregoing, there was no error on the part of the Court of Appeals when it dismissed Philippine National Bank’s Petition for being the wrong remedy. Indeed, Philippine National Bank was not questioning the probative value of the evidence. Instead, it was questioning the conclusion of the trial court that registration had not been perfected based on the evidence presented.

V

The registration of the Sheriff’s Provisional Certificate of Sale was completed.

Philippine National Bank argues that the registration was completed, and restates the doctrine in *National Housing Authority v. Basa, Jr., et al.*:³⁹⁵

Once the Certificate of Sale is entered in the Primary Book of Entry of the Registry of Deeds with the registrant having paid all the required fees and accomplished all that is required of him under the law to cause registration, the registration is complete.³⁹⁶

Philippine National Bank further argues that “[t]he records of all the transactions are recorded in the Primary Entry Book and the annotation on the titles of the transaction do not control registration. It is the recording in the Primary Entry Book which controls registration.”³⁹⁷

Philippine National Bank adds that though the annotation of a certificate of sale at the back of the certificates of title is immaterial in the perfection of registration, the evidence shows that the Certificate of Sale was annotated.³⁹⁸

³⁹⁴ Id. at 378–379.

³⁹⁵ 632 Phil. 471, 494 (2010) [Per J. Leonardo-De Castro, First Division].

³⁹⁶ *Rollo* (G.R. No. 205463), p. 38, Petition for Review on Certiorari.

³⁹⁷ Id. at 39.

³⁹⁸ Id.

Philippine National Bank alleges that registration was completed because Atty. Patriarca, the Register of Deeds at that time, affixed her signature but would later erase it.³⁹⁹

Philippine National Bank cites Atty. Cruzabra's Comment, which alleges that the Sheriff's Provisional Certificate of Sale and other documents relative to the sale were registered in the Primary Entry Book of the Registry of Deeds of Davao City.⁴⁰⁰ The Comment also states that:

3. The Sheriff's Provisional Certificate of Sale was annotated at the back of the aforementioned titles but it does not bear the signature of the former Registrar of Deeds. Noted however is that the portion below the annotation of the Provisional Sheriff's [sic] Certificate of Sale there appears to be erasures ("snowpake"), and [Atty. Cruzabra] is not in a position to conclude as to the circumstances [relative to said erasures], for lack of personal knowledge as to what transpired at that time.⁴⁰¹ (Citation omitted)

Philippine National Bank also cites the Decision in Administrative Case No. 02-13 dated January 12, 2005, which was the case against Atty. Patriarca for Grave Misconduct and Conduct Unbecoming of a Public Official. In the Decision, the Land Registration Authority found that:

Respondent herein likewise admits that she finally signed the PNB transaction annotated on the subject titles when she was informed that the motion for reconsideration was denied by this Authority, but she subsequently erased her signature when she subsequently found out that an appeal was filed by the Limso spouses.

....

The registration of these documents became complete when respondent affixed her signature below these annotations. Whatever information belatedly gathered thereafter relative to the circumstances as to the registrability of these documents, respondent can not unilaterally take judicial notice thereof and proceed to lift at her whims and caprices what has already been officially in force and effective, by erasing thereon her signature.⁴⁰²

In addition, Philippine National Bank argues that the erasure of Atty. Patriarca's signature using correction fluid could not have revoked, cancelled, or annulled the registration since under Section 108 of Presidential Decree 1529, only a court order can revoke registration.⁴⁰³

³⁹⁹ Id. at 906, Philippine National Bank's Memorandum.

⁴⁰⁰ Id. at 930.

⁴⁰¹ Id.

⁴⁰² Id. at 89.

⁴⁰³ Id. at 41-42, Petition for Review on Certiorari.

Philippine National Bank alleges that it has complied with the requirements under Section 7 of Act No. 3135 and Section 47 of Republic Act No. 8791.⁴⁰⁴ Thus, it is entitled to a writ of possession.⁴⁰⁵

The Office of the Solicitor General filed its Comment,⁴⁰⁶ quoting the dispositive portion of the Land Registration Authority's Consulta No. 3405 dated May 21, 2002.⁴⁰⁷

WHEREFORE, in view of the foregoing, the Sheriff's Provisional Certificate of Sale dated February 04, 2002 *is registerable* on TCT Nos. T-147820, T-147386, and T-247012, provided all other registration requirements are complied with.⁴⁰⁸ (Emphasis supplied)

The Office of the Solicitor General also quotes the dispositive portion of the Land Registration Authority's Resolution in the Motion for Reconsideration:⁴⁰⁹

WHEREFORE, in view of the foregoing[,] the Sheriff's Provisional Certificate of Sale dated February 4, 2002 *is registrable* on TCT Nos. T-147820, T-147821, T-147386 and T-247012, provided all other registration requirements are complied with.⁴¹⁰ (Emphasis supplied)

The Office of the Solicitor General then cites *National Housing Authority and Autocorp Group and Autographics, Inc. v. Court of Appeals*⁴¹¹ and discusses that when all the requirements for registration of annotation has been complied with, it is ministerial upon the Register of Deeds to register the annotation.⁴¹² The Register of Deeds is not authorized "to make an appraisal of proofs outside of the documents sought to be registered."⁴¹³

For the Office of the Solicitor General, the Register of Deeds' refusal to affix the annotation on the foreclosed properties' titles "should not preclude the completion of the registration of any applicant who has complied with the requirements of the law to register its right or interest in registered lands."⁴¹⁴

⁴⁰⁴ General Banking Law of 2000.

⁴⁰⁵ *Rollo* (G.R. No. 205463), pp. 44–48, Petition for Review on Certiorari.

⁴⁰⁶ *Id.* at 79–84.

⁴⁰⁷ *Id.* at 80.

⁴⁰⁸ *Id.*

⁴⁰⁹ *Id.* at 80–81.

⁴¹⁰ *Id.* at 81.

⁴¹¹ 481 Phil. 298 (2004) [Per J. Puno, Second Division].

⁴¹² *Rollo* (G.R. No. 205463), pp. 81–82, Office of the Solicitor General's Comment.

⁴¹³ *Id.* at 82.

⁴¹⁴ *Id.* at 951, Office of the Solicitor General's Memorandum.

Spouses Limso and Davao Sunrise, as intervenors-oppositors, filed a Memorandum.⁴¹⁵ They cite Section 117⁴¹⁶ of Presidential Decree No. 1529⁴¹⁷ and argue that registration of the Certificate of Sale in the Primary Entry Book is a preliminary step in registration.⁴¹⁸ Since Philippine National Bank withdrew the documents it submitted to the Register of Deeds of Davao City, the Sheriff's Provisional Certificate of Sale was not registered.⁴¹⁹

Further, Philippine National Bank's argument that "entry . . . in the Primary Entry Book is equivalent to registration"⁴²⁰ is not in accordance with Section 56⁴²¹ of Presidential Decree No. 1529.⁴²² Moreover, "[t]he

⁴¹⁵ Id. at 860–897.

⁴¹⁶ Pres. Decree No. 1529 (1978), sec. 117 provides:

SECTION 117. Procedure. — When the Register of Deeds is in doubt with regard to the proper step to be taken or memorandum to be made in pursuance of any deed, mortgage or other instrument presented to him for registration, or where any party in interest does not agree with the action taken by the Register of Deeds with reference to any such instrument, the question shall be submitted to the Commissioner of Land Registration by the Register of Deeds, or by the party in interest thru the Register of Deeds.

Where the instrument is denied registration, the Register of Deeds shall notify the interested party in writing, setting forth the defects of the instrument or legal grounds relied upon, and advising him that if he is not agreeable to such ruling, he may, without withdrawing the documents from the Registry, elevate the matter by consulta within five days from receipt of notice of the denial of registration to the Commissioner of Land Registration upon payment of a consulta fee in such amount as shall be prescribed by the Commissioner of Land Registration.

The Register of Deeds shall make a memorandum of the pending consulta on the certificate of title which shall be cancelled motu proprio by the Register of Deeds after final resolution or decision thereof, or before resolution, if withdrawn by petitioner.

The Commissioner of Land Registration, considering the consulta and the records certified to him after notice to the parties and hearing, shall enter an order prescribing the step to be taken or memorandum to be made. His resolution or ruling in consultas shall be conclusive and binding upon all Registers of Deeds, provided, that the party in interest who disagrees with the final resolution, ruling or order of the Commissioner relative to consultas may appeal to the Court of Appeals within the period and in the manner provided in Republic Act No. 5434.

⁴¹⁷ *Rollo* (G.R. No. 205463), pp. 881–882, Spouses Limso and Davao Sunrise's Memorandum.

⁴¹⁸ Id. at 883–884.

⁴¹⁹ Id. at 881. Although the records do not show whether DSIDC and Spouses Limso were allowed to intervene, a copy of the Resolution requiring the parties to submit their respective memoranda was sent to counsel for DSIDC and Spouses Limso.

⁴²⁰ Id. at 884.

⁴²¹ Pres. Decree No. 1529 (1978), sec. 56 provides:

SECTION 56. Primary Entry Book; Fees; Certified Copies. — Each Register of Deeds shall keep a primary entry book in which, upon payment of the entry fee, he shall enter, in the order of their reception, all instruments including copies of writs and processes filed with him relating to registered land. He shall, as a preliminary process in registration, note in such book the date, hour and minute of reception of all instruments, in the order in which they were received. They shall be regarded as registered from the time so noted, and the memorandum of each instrument, when made on the certificate of title to which it refers, shall bear the same date: Provided, that the national government as well as the provincial and city governments shall be exempt from the payment of such fees in advance in order to be entitled to entry and registration.

Every deed or other instrument, whether voluntary or involuntary, so filed with the Register of Deeds shall be numbered and indexed and endorsed with a reference to the proper certificate of title. All records and papers relative to registered land in the office of the Register of Deeds shall be open to the public in the same manner as court records, subject to such reasonable regulations as the Register of Deeds, under the direction of the Commissioner of Land Registration, may prescribe.

All deeds and voluntary instruments shall be presented with their respective copies and shall be attested and sealed by the Register of Deeds, endorsed with the file number, and copies may be delivered to the person presenting them.

Certified copies of all instruments filed and registered may also be obtained from the Register of Deeds upon payment of the prescribed fees.

signature of the Register of Deeds is crucial to the completeness of the registration process.”⁴²³

Spouses Limso and Davao Sunrise posit that Philippine National Bank admitted that the Certificate of Sale is not registered in various hearings.⁴²⁴ These admissions are judicial admissions that should be binding on Philippine National Bank.⁴²⁵

Spouses Limso and Davao Sunrise allege that during the oral arguments held on March 19, 2003 at the Court of Appeals in CA G.R. SP No. 71527, counsel for Philippine National Bank stated:⁴²⁶

ATTY. [BENILDA A.] TEJADA:

Yes, we can show the documents which we are going to file your Honors.

We would like to state also your Honors the fact of why no registration was ever made in this case. Counsel forgot to mention that the fact of no registration is simply because the Register of Deeds refused to register our Certificate of Sale. We have a pending case against them Sir before the LRA and before the Ombudsman fore [sic] refusal to register our Certificate of Sale. Now, we have filed this case because inspite [sic] of the fact the Register of Deeds addressed a consulta to the Land Registration Authority on the registerity of the Certificate of Sale your Honors[,] [i]t was at their instance that there was a consulta.

And then, the Land Registration Authority has already rendered its opinion that the document is registrable. Despite that your Honors, the document has never been registered. So that was the subject of our case against them. We do not understand the intransigencies we do not understand the refusal.⁴²⁷

In addition, the Court of Appeals correctly dismissed Philippine National Bank’s appeal because the issue raised involved a question of law, specifically “whether or not mere entry in the Primary Entry Book is considered as registration of the subject Certificate of Sale.”⁴²⁸

Section 56 of Presidential Decree No. 1529 states:

⁴²² Property Registration Decree (1978).

⁴²³ *Rollo* (G.R. No. 205463), p. 885, Nancy Limso and Davao Sunrise’s Memorandum.

⁴²⁴ *Id.* at 886–888.

⁴²⁵ *Id.* at 887–888.

⁴²⁶ *Id.* at 886–887.

⁴²⁷ *Id.* at 887.

⁴²⁸ *Id.* at 894.

SECTION 56. Primary Entry Book; Fees; Certified Copies. — Each Register of Deeds shall keep a primary entry book in which, upon payment of the entry fee, he shall enter, in the order of their reception, all instruments including copies of writs and processes filed with him relating to registered land. He shall, as a preliminary process in registration, note in such book the date, hour and minute of reception of all instruments, in the order in which they were received. *They shall be regarded as registered from the time so noted*, and the memorandum of each instrument, when made on the certificate of title to which it refers, shall bear the same date: Provided, that the national government as well as the provincial and city governments shall be exempt from the payment of such fees in advance in order to be entitled to entry and registration. (Emphasis supplied)

In this case, Philippine National Bank filed the Sheriff’s Provisional Certificate of Sale, which was duly approved by the Executive Judge, before the Registry of Deeds of Davao City. Entries were made in the Primary Entry Book. Hence, the Sheriff’s Provisional Certificate of Sale should be considered registered.

Autocorp Group and Autographics, Inc. involved an extrajudicial foreclosure of mortgaged property and the registration of a Sheriff’s Certificate of Sale. Autocorp sought the issuance of a writ of injunction “to prevent the register of deeds from registering the subject certificate of sale[.]”⁴²⁹

This court explained that a Sheriff’s Certificate of Sale is an involuntary instrument and that a writ of injunction will no longer lie because of the following reasons:

[F]or the registration of an involuntary instrument, the law does not require the presentation of the owner’s duplicate certificate of title and *considers the annotation of such instrument upon the entry book, as sufficient to affect the real estate to which it relates.*

...

....

It is a ministerial duty on the part of the Register of Deeds to annotate the instrument on the certificate of sale after a valid entry in the primary entry book. P.D. No. 1524 provides:

SEC. 63. Foreclosure of Mortgage. — x x x

(b) If the mortgage was foreclosed extrajudicially, a certificate of sale executed by the officer who conducted the sale *shall be filed with*

⁴²⁹ *Autocorp Group and Autographics, Inc. v. Court of Appeals*, 481 Phil. 298, 312 (2004) [Per J. Puno, Second Division].

the Register of Deeds who shall make a brief memorandum thereof on the certificate of title.

In fine, petitioner's prayer for the issuance of a writ of injunction, to prevent the register of deeds from registering the subject certificate of sale, had been rendered moot and academic by the valid entry of the instrument in the primary entry book. *Such entry is equivalent to registration.*⁴³⁰ (Emphasis supplied, citation omitted)

Based on the records of this case, the Sheriff's Certificate of Sale filed by Philippine National Bank was already recorded in the Primary Entry Book.

The refusal of the Register of Deeds to annotate the registration on the titles of the properties should not affect Philippine National Bank's right to possess the properties.

As to the argument that Philippine National Bank admitted in open court that the Certificate of Sale was not registered, it is evident from Spouses Limso and Davao Sunrise's Memorandum that Philippine National Bank immediately explained that the non-registration was due to the Register of Deeds' refusal. Thus, the alleged non-registration was not due to Philippine National Bank's fault.

It appears on record that Philippine National Bank already complied with the requirements for registration. Thus, there was no reason for the Register of Deeds to persistently refuse the registration of the Certificate of Sale.

At any rate, the Land Registration Authority stated in its Resolution in Administrative Case No. 02-13 that Atty. Patriarca herself admitted that she already affixed her signature on the annotation at the back of the certificate of titles, and that she subsequently erased her signature.⁴³¹ This finding of fact in the administrative case supports the argument of Philippine National Bank and the opinion of the Office of the Solicitor General that the Certificate of Sale should be considered registered.

With regard to the issue of whether Philippine National Bank is entitled to a writ of possession, the trial court in Other Case No. 124-2002 denied the application for the writ of possession and explained:

Portion of Sec. 47 of RA No. 8791 is quoted:

⁴³⁰ Id. at 311-312.

⁴³¹ *Rollo* (G.R. No. 205463), p. 89, Land Registration Authority's Resolution.

x x x the purchaser at the auction sale concerned whether in a judicial or extra-judicial foreclosure shall have the right to enter upon and take possession of such property immediately after the date of the confirmation of the auction sale and administer the same in accordance with law x x x.

From the quoted provision, one can readily conclude that before the sale is confirmed, it is not considered final or perfected to entitle the purchaser at the auction sale to the writ of possession as a matter of right. .

In extra-judicial foreclosure, there is technically no confirmation of the auction sale in the manner provided for by Sec. 7 of Rule 68. The process though involves an application, preparation of the notice of extra-judicial sale, the extra-judicial foreclosure sale, issuance of the certificate of sale, approval of the Executive Judge or in the latter's absence, the Vice-Executive Judge and the registration of the certificate of sale with the Register of Deeds.

While it may be true that as found by the CA in the case earlier cited that DSIDC had only until January 24, 2001 to redeem its properties and that the registration of the certificate of foreclosure sale is no longer relevant in the reckoning of the redemption period, for purposes of the issuance of the writ of possession, petitioner to this Court's belief should complete the entire process in extra-judicial foreclosure. Otherwise the sale may not be considered perfected and the application for writ of possession may be denied.

The records disclose that contrary to petitioner's claim, the Certificate of Sale covering the subject properties has not been registered with the Registry of Deeds of Davao City as the Court finds no annotation thereof. As such, the sale is not considered perfected to entitle petitioner to the writ of possession as a matter of right.

Accordingly, for reason stated, the petition is **DISMISSED**. With the dismissal of the petition, PNB's Motion for Reception and Admission of PNB's Ex-parte Testimonial and Documentary Evidence is **DENIED**.

SO ORDERED.⁴³²

However, Philippine National Bank is applying for the writ of possession on the ground that it is the winning bidder during the auction sale, and not because it consolidated titles in its name. As such, the applicable provisions of law are Section 47 of Republic Act No. 8791⁴³³ and Section 7 of Act No. 3135.⁴³⁴

Section 47 of Republic Act No. 8791 provides:

⁴³² *Rollo* (G.R. No. 173194), pp. 560–561, Regional Trial Court Order in Other Case No. 124-2002.

⁴³³ The General Banking Law of 2000.

⁴³⁴ An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real Estate Mortgages (1924).

SECTION 47. Foreclosure of Real Estate Mortgage. — In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real estate which is security for any loan or other credit accommodation granted, the mortgagor or debtor whose real property has been sold for the full or partial payment of his obligation shall have the right within one year after the sale of the real estate, to redeem the property by paying the amount due under the mortgage deed, with interest thereon at the rate specified in the mortgage, and all the costs and expenses incurred by the bank or institution from the sale and custody of said property less the income derived therefrom. *However, the purchaser at the auction sale concerned whether in a judicial or extrajudicial foreclosure shall have the right to enter upon and take possession of such property immediately after the date of the confirmation of the auction sale and administer the same in accordance with law.* Any petition in court to enjoin or restrain the conduct of foreclosure proceedings instituted pursuant to this provision shall be given due course only upon the filing by the petitioner of a bond in an amount fixed by the court conditioned that he will pay all the damages which the bank may suffer by the enjoining or the restraint of the foreclosure proceeding.

Notwithstanding Act 3135, juridical persons whose property is being sold pursuant to an extrajudicial foreclosure, shall have the right to redeem the property in accordance with this provision until, but not after, the registration of the certificate of foreclosure sale with the applicable Register of Deeds which in no case shall be more than three (3) months after foreclosure, whichever is earlier. Owners of property that has been sold in a foreclosure sale prior to the effectivity of this Act shall retain their redemption rights until their expiration. (Emphasis supplied)

Section 7 of Act No. 3135 provides:

SECTION 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an ex parte motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

The rule under Section 7 of Act No. 3135 was restated in *Nagtalon v. United Coconut Planters Bank*.⁴³⁵

During the one-year redemption period, as contemplated by Section 7 of the above-mentioned law, a purchaser may apply for a writ of possession by filing an *ex parte* motion under oath in the registration or cadastral proceedings if the property is registered, or in special proceedings in case the property is registered under the Mortgage Law. In this case, a bond is required before the court may issue a writ of possession.⁴³⁶

On the other hand, a writ of possession may be issued as a matter of right when the title has been consolidated in the buyer's name due to nonredemption by the mortgagor. Under this situation, the basis for the writ of possession is ownership of the property.⁴³⁷

The Sheriff's Provisional Certificate of Sale should be deemed registered. However, Philippine National Bank must still file a bond before the writ of possession may be issued.

VI

To fully dispose of all the issues in these consolidated cases, this court shall also rule on one of the issues raised in G.R. No. 158622.

In G.R. No. 158622, Spouses Limso and Davao Sunrise allege that the Sheriff's Provisional Certificate of Sale does not state the appropriate redemption period; thus, they filed a Petition for Declaratory Relief, which was docketed as Civil Case No. 29,036-2002.⁴³⁸

In the loan agreement, natural and juridical persons are co-debtors, while the properties mortgaged to secure the loan are owned by Davao Sunrise.

Act No. 3135 provides that the period of redemption is one (1) year after the sale.⁴³⁹ On the other hand, Republic Act No. 8791 provides a

⁴³⁵ G.R. No. 172504, July 31, 2013, 702 SCRA 615 [Per J. Brion, Second Division].

⁴³⁶ Id. at 623.

⁴³⁷ *Tolosa v. United Coconut Planters Bank*, G.R. No. 183058, April 3, 2013, 695 SCRA 138, 146 [Per J. Perez, Second Division].

⁴³⁸ *Rollo* (G.R. No. 158622, vol. I), pp. 13–17, Petition for Review on Certiorari.

⁴³⁹ Act 3135 (1924), sec. 6, as amended by Act 4118 (1933), sec. 1, provides:
SEC. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under

shorter period of three (3) months to redeem in cases involving juridical persons.⁴⁴⁰

We rule that the period of redemption for this case should be not more than three (3) months in accordance with Section 47 of Republic Act No. 8791. The mortgaged properties are all owned by Davao Sunrise. Section 47 of Republic Act No. 8791 states: “the mortgagor or debtor whose real property has been sold” and “juridical persons whose property is being sold[.]” Clearly, the law itself provides that the right to redeem belongs to the owner of the property mortgaged. As the mortgaged properties all belong to Davao Sunrise, the shorter period of three (3) months is the applicable redemption period.

The policy behind the shorter redemption period was explained in *Goldenway Merchandising Corporation v. Equitable PCI Bank*:⁴⁴¹

The difference in the treatment of juridical persons and natural persons was based on the nature of the properties foreclosed—whether these are used as residence, for which the more liberal one-year redemption period is retained, or used for industrial or commercial purposes, in which case a shorter term is deemed necessary to reduce the period of uncertainty in the ownership of property and enable mortgagee-banks to dispose sooner of these acquired assets. It must be underscored that the General Banking Law of 2000, crafted in the aftermath of the 1997 Southeast Asian financial crisis, sought to reform the General Banking Act of 1949 by fashioning a legal framework for maintaining a safe and sound banking system. In this context, the amendment introduced by Section 47 embodied one of such safe and sound practices aimed at ensuring the solvency and liquidity of our banks.⁴⁴² (Citation omitted)

To grant a longer period of redemption on the ground that a co-debtor is a natural person defeats the purpose of Republic Act No. 8791. In addition, the real properties mortgaged by Davao Sunrise appear to be used for commercial purposes.⁴⁴³

WHEREFORE, the Petition for Review on Certiorari in G.R. No. 173194 is **DENIED**.

which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act.

⁴⁴⁰ Rep. Act No. 8791 (2000), sec. 47.

⁴⁴¹ G.R. No. 195540, March 13, 2013, 693 SCRA 439 [Per J. Villarama, Jr., First Division].

⁴⁴² Id. at 453.

⁴⁴³ *Rollo* (G.R. No. 173194), pp. 106–111, Petition for Extrajudicial Foreclosure of Real Estate Mortgage.

The Petition docketed as G.R. No. 196958 is **PARTIALLY GRANTED**, while the Petition docketed as G.R. No. 197120 is **DENIED**. The Decision of the Court of Appeals in CA-G.R. CV No. 79732-MIN is **AFFIRMED with MODIFICATION**.

The Conversion, Restructuring and Extension Agreement executed in 1999 is deemed to have novated the Credit Agreement and Loan Agreement executed in 1993. Thus, the principal loan obligation of Davao Sunrise Investment and Development Corporation and Spouses Robert Alan and Nancy Limso shall be computed on the basis of the amounts indicated in the Conversion, Restructuring and Extension Agreement.

Interest on the principal loan obligation shall be at the rate of 12% per annum and computed from January 28, 1999, the date of the execution of the Conversion, Restructuring and Extension Agreement. Interest rate on the conventional interest shall be at the rate of 12% per annum from August 21, 2000, the date of judicial demand, to June 30, 2013. From July 1, 2013 until full satisfaction, the interest rate on the conventional interest shall be computed at 6% per annum in view of this court's ruling in *Nacar v. Gallery Frames*.⁴⁴⁴

⁴⁴⁴ G.R. No. 189871, August 13, 2013, 703 SCRA 439, 457–458 [Per J. Peralta, En Banc]. In *Nacar*, this court held: “To recapitulate and for future guidance, the guidelines laid down in the case of *Eastern Shipping Lines* are accordingly modified to embody BSP-MB Circular No. 799, as follows:

- I. When an obligation, regardless of its source, *i.e.*, law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on ‘Damages’ of the Civil Code govern in determining the measure of recoverable damages.
- II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:
 1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% *per annum* to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
 2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% *per annum*. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.
 3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% *per annum* from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

And, in addition to the above, judgments that have become final and executory prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein.” (Emphasis in the original, citation omitted)

This case is ordered **REMANDED** to Branch 17 of the Regional Trial Court of Davao City for the computation of the total amount of Davao Sunrise Investment and Development Corporation and Spouses Robert Alan and Nancy Limso's remaining obligation.

The Petition docketed as G.R. No. 205463 is **PARTIALLY GRANTED**. The Sheriff's Provisional Certificate of Sale is deemed to have been registered. In view of the facts of this case, the applicable period of redemption shall be three (3) months as provided under Republic Act No. 8791.

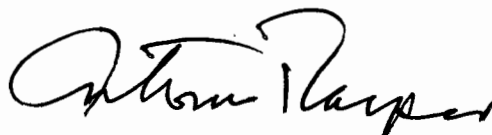
In case the final computation shows that Davao Sunrise Investment and Development Corporation and Spouses Robert Alan and Nancy Limso overpaid Philippine National Bank, Philippine National Bank must return the excess amount.

The writ of possession prayed for by Philippine National Bank may only be issued after all the requirements for the issuance of a writ of possession are complied with.

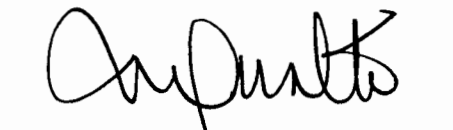
SO ORDERED.


MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson



ARTURO D. BRION
Associate Justice


DIOSDADO M. PERALTA
Associate Justice


MARIANO C. DEL CASTILLO
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.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

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.



MARIA LOURDES P. A. SERENO
Chief Justice