Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

GOLDWELL PROPERTIES TAGAYTAY, INC., NOVA NORTHSTAR REALTY CORPORATION, and NS NOVA STAR COMPANY, INC., represented herein by FLOR ALANO,

Petitioners,

-versus-

METROPOLITAN BANK AND TRUST COMPANY,

Respondent.

G.R. No. 209837

Present:

LEONEN, *J.*,
Chairperson,
HERNANDO,
INTING,
DELOS SANTOS, and
LOPEZ, J. Y., *JJ.*

Promulgated:

May 12, 2021

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DECISION

HERNANDO, *J.*:

This Petition for Review on *Certiorari* challenges the January 31, 2013 Decision[1] and November 7, 2013 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 92874.

The issuances of the appellate court affirmed the July 14, 2008 Decision[3] and October 23, 2008 Order[4] of the Regional Trial Court (RTC) of Makati, Branch 59, in Civil Case No. 07-183, which dismissed the Complaint for

[1] *Rollo*, pp. 7-26; penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Noel G. Tijam (a retired member of the Court) and Romeo F. Barza.
[2] Id. at 28; penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Noel G. Tijam (a former member of this Court) and Romeo F. Barza.
[3] Id. at 144-151; penned by Presiding Judge Winlove M. Dumayas.
[4] Id. at 168; penned by Presiding Judge Winlove M. Dumayas.

Specific Performance, Accounting and Damages with Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order filed by the petitioners.

The Antecedents:

Petitioner Goldwell Properties Tagaytay, Inc. (Goldwell) obtained loans from respondent Metropolitan Bank and Trust Company (Metrobank) in 2001 covered by several promissory notes[5] (PN) and secured by real estate mortgages

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[5] CA *rollo*, pp. 147-175; Promissory Note dated June 26, 2001 for the principal sum of ₱19,800,000.00 with interest rate of 15.50% p.a. over 304 days to be repriced every 30 days, and due on April 26, 2002, with a penalty charge of 18% p.a. based on any unpaid principal and/or interest to be computed from date of default and full payment of the obligation;
Promissory Note dated June 25, 2001 for the principal sum of ₱650,000.00 with interest rate of 15.50% p.a. over 305 days to be repriced every 30 days, and due on April 26, 2002, with a penalty charge of 18% p.a. based on any unpaid principal and/or interest to be computed from date of default and full payment of the obligation;
Promissory Note dated June 19, 2001 for the principal sum of ₱4,700,000.00 with interest rate of 15.50% p.a. over 1,695 days to be repriced every 30 days, for equal amortization of ₱85,454.55 to start on July 19, 2001, and with a penalty charge of 18% p.a. based on any unpaid principal and/or interest to be computed from date of default and full payment of the obligation;
Promissory Note dated June 19, 2001 for the principal sum of ₱1,050,000 with interest rate of 15.50% p.a. over 311 days to be repriced every 30 days, and due on April 26, 2002, with a penalty charge of 18% p.a. based on any unpaid principal and/or interest to be computed from date of default and full payment of the obligation;
Promissory Note dated June 11, 2001 for the principal sum of ₱250,000.00 with interest rate of 15.50% p.a. over 319 days to be repriced every 30 days, and due on April 26, 2002, with a penalty charge of 18% p.a. based on any unpaid principal and/or interest to be computed from date of default and full payment of the obligation;
Promissory Note dated June 5, 2001 for the principal sum of ₱650,000.00 with interest rate of 15.75% p.a. over 325 days to be repriced every 30 days, and due on April 26, 2002, with a penalty charge of 18% p.a. based on any unpaid principal and/or interest to be computed from date of default and full payment of the obligation;
Promissory Note dated May 28, 2001 for the principal sum of ₱600,000.00 with interest rate of 15.75% p.a. over 333 days to be repriced every 30 days, and due on April 26, 2002, with a penalty charge of 18% p.a. based on any unpaid principal and/or interest to be computed from date of default and full payment of the obligation;
Promissory Note dated April 27, 2001 for the principal sum of ₱800,000.00 with interest rate of 15.75% p.a. over 1,748 days to be repriced every 30 days, for equal amortization of ₱13,793.10 to start on May 27, 2001, and with a penalty charge of 18% p.a. based on any unpaid principal and/or interest to be computed from date of default and full payment of the obligation;
Promissory Note dated April 20, 2001 for the principal sum of ₱11,800,000.00 with interest rate of 15.96% p.a. over 307 days to be repriced every 30 days, and due on February 21, 2002, with a penalty charge of 18% p.a. based on any unpaid principal and/or interest to be computed from date of default and full payment of the obligation;
Promissory Note dated April 20, 2001 for the principal sum of ₱500,000.00 with interest rate of 15.75% p.a. over 1,755 days to be repriced every 30 days, for equal amortization of ₱8,771.93 to start on May 20, 2001, and with a penalty charge of 18% p.a. based on any unpaid principal and/or interest to be computed from date of default and full payment of the obligation;
Promissory Note dated April 10, 2001 for the principal sum of ₱300,000.00 with interest rate of 15.75% p.a. over 1,765 days to be repriced every 30 days, for equal amortization of ₱5,172.41 to start on May 10, 2001, and with a penalty charge of 18% p.a. based on any unpaid principal and/or interest to be computed from date of default and full payment of the obligation;
Promissory Note dated March 30, 2001 for the principal sum of ₱200,000.00 with interest rate of 16.216% p.a. over 328 days to be repriced every 30 days, and due on February 21, 2002, with a penalty charge of 18% p.a. based on any unpaid principal and/or interest to be computed from date of default and full payment of the obligation;
Promissory Note dated March 26, 2001 for the principal sum of ₱1,000,000.00 with interest rate of 16.50% p.a. over 1,780 days to be repriced every 30 days, for equal amortization of ₱17,241.38 to start on April 25, 2001, and with a penalty charge of 18% p.a. based on any unpaid principal and/or interest to be computed from date of default and full payment of the obligation;
Promissory Note dated February 8, 2001 for the principal sum of ₱7,500,000.00 with interest rate of 17.50% p.a. over 5 years to be repriced every month, for equal monthly amortization of ₱62,500.00 to start one month after the release of the loan, and with a penalty charge of 18% p.a. based on any unpaid principal and/or interest to be computed from date of default and full payment of the obligation.

and a continuing surety agreement.[6] Petitioner Nova Northstar Realty Corporation (Nova) also obtained loans from Metrobank under PN Nos. TLS 2568 and TLS 2559 secured by a real estate mortgage and continuing surety agreement.[7]

When Nova and Goldwell (debtor companies) experienced financial difficulties, both requested Metrobank to modify their interest payment scheme from monthly to quarterly. According to Metrobank, when the debtor companies made the request during the last week of October 2001, a branch manager of Metrobank immediately referred the matter to its executive committee. On December 11, 2001, or roughly a month and a half later, Metrobank's executive committee approved the request.[8]

On the other hand, the petitioners, in a letter[9] dated April 24, 2002, alleged that it took the bank four months to reduce the approval in writing, which resulted in the accumulation of interest and in their failure to pay. Hence, the debtor companies requested for the restructuring of their outstanding loans[10] and stated the following:

> Our collection from our receivables can pay 25% of our interest due if reduced to 10% interest per annum. The 70% interest balance [can] be capitalized and added to the principal of ₱49.28 Million. We can pay the interest due, quarterly, on the new loan balance and the loan principal renewable yearly. Should our collection allow, like before, we will reduce balance as fast as we can.[11]

The parties executed two Debt Settlement Agreements (DSAs) both dated August 15, 2003. One was between Metrobank and Nova as debtor-mortgagor,[12] with spouses Jose N. Hernandez and Eva L. Hernandez (spouses Hernandez) as sureties. The other involved Metrobank and Goldwell as borrower-mortgagor,[13] Nova and Nova Northstar Service Apartment Hotel Co., Inc. as third-party mortgagors, and the spouses Hernandez as sureties.

In Nova's DSA, Nova and the spouses Hernandez acknowledged that as of July 31, 2003, they had a total outstanding obligation of ₱19,539,999.33 to Metrobank, broken down as follows:[14]

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[6] *Rollo*, pp. 303-306.
[7] Id. at 7-8, 299.
[8] *Records*, pp. 186-187, 199-200.
[9] CA *rollo*, pp. 84-85.
[10] *Rollo*, p. 8.
[11] CA *rollo*, p. 84.
[12] *Rollo*, pp. 299-302.
[13] Id. at 303-307.
[14] Id. at 299.

Principal	₱12,000,000.00
Past Due Interest @ 16% p.a. (from 06.28.01 – 07.31.03)	3,911,066.06
Value Added Tax @ 10% p.a. (from 01.01.03 – 07.31.03)	113,066.60
Penalty charges @ 18% p.a. (from 06.28.01 – 07.31.03)	3,515,866.67
TOTAL	**₱19,539,999.33**

Similarly, in Goldwell's DSA, Goldwell and the spouses Hernandez acknowledged that as of July 31, 2003, they had a total outstanding obligation of ₱55,477,836.22 to Metrobank, broken down as follows:[15]

Principal	₱37,280,902.09
Past Due Interest @ 16% p.a. (from 07.24.01 to 07.31.03)	12,019,801.44
Value Added Tax @ 10% p.a. (from 01.01.03 to 07.31.03)	349,425.68
Penalty charges @ 18% p.a. (from 07.24.01 to 07.31.03)	7,812,510.26
Fire insurance premium	52,976.75
	57,515,616.22
Less: Partial payment (06.30.03)	2,037,780.00
TOTAL	**₱55,477,836.22**

The relevant terms and conditions of both DSAs are summarized, to wit:

1. 75% of the outstanding penalty charges are waived by Metrobank;
2. Outstanding past due interest as of July 31, 2003 shall be recomputed at 12% [per *annum*] so that the interest plus the corresponding value added tax [VAT] due shall be accordingly reduced and covered by a separate promissory note to mature on July 31, 2008, and which amount shall be paid as follows:
   a. Two-year moratorium on the payment of the principal portion of the obligation.
   b. Debtor-mortgagor and sureties shall pay quarterly principal payment on July 31, 2005 and every end of the quarter thereafter without need of demand.

[15] Id. at 304.

c. In addition to the above principal payment, debtor-mortgagor and sureties shall pay interest at 10% [per *annum*] for the first year repriceable every quarter thereafter based on the prevailing market rate plus 10% [VAT], which shall be paid in arrears to Metrobank starting October 31, 2003 and every end of the quarter thereafter without need of demand.

3. The remaining obligation (after Nos. 1 and 2) shall be the **principal amount of the new obligation** and shall be paid in five years from July 31, 2003, in the same manner as above.[16]

Moreover, the DSAs provided that:

4. Default in the payment to METROBANK of any amounts due to it on stipulated dates shall have the following effects, alternatives, concurrent and cumulative with each other;

a. All payments may, at METROBANK'S option, be applied to the obligations as reverted to the original amount specified in the Third Whereas Clause above, the outstanding amount of which may be treated as totally and immediately due and demandable.

b. METROBANK, may at its option, enforce the terms and conditions of the original loan documents evidencing the obligations under the First Whereas Clause with all interest, penalties and other charges due thereon;

c. Penalty at the rate of 18% per annum shall be imposed on all defaulted amortizations from date of default to full payment thereof;

d. Foreclose the Real Estate Mortgages referred in the First Whereas Clause above, judicially or extrajudicially, at METROBANK's option[.][17]

Pursuant to the DSAs, the debtor companies' total restructured balance amounted to ₱62,447,492.33. Thus, Goldwell and Nova executed PNs amounting to ₱9,305,079.17 and ₱12,878,966.66, respectively, both in favor of Metrobank.[18] The figures represented the principal, as well as the capitalized and recomputed outstanding interests plus the corresponding VAT thereto.[19]

At this point, Metrobank confirmed in a letter[20] dated November 5, 2003 addressed to an officer of Home Development Mutual Fund (Pag-Ibig Fund) that the petitioners had good credit standing and were valued customers of the bank.

According to the debtor companies, they still paid their dues until August 2004.[21] However, Metrobank clarified that they only paid the interest

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[16] Id. at 9-10; *see also* pp. 300-301, 305.
[17] Id. at 300-301, 305-306.
[18] *Records*, pp. 112-113.
[19] *Rollo*, p. 10.
[20] CA *rollo*, p. 146.
[21] Official Receipts, *rollo*, pp. 456-469; *records*, pp. 47-60.

amortizations and/or penalty charges.[22] In addition, the bank presented commercial loans note/maintenance history inquiry[23] logs to show that the petitioners' last amortization payments were made on August 2, 2004.

In a letter[24] dated October 12, 2004, the petitioners requested Metrobank to allow them to pay the equivalent loan value of their collaterals as full payment of the loan. However, Metrobank sent separate demand letters both dated November 25, 2004 to Nova[25] and Goldwell[26] for the payment of their past due accounts.

In a letter[27] dated February 9, 2005, the petitioners asked for the release of some of their collaterals equivalent to their loan values upon payment of ₱20 Million. They added that (assuming that their obligation amounted to ₱60 Million) the balance of ₱40 Million would be payable in five years with quarterly interest payments only for the first year and payment of the principal to start at the end of the first quarter of the second year.

Thereafter, in a letter[28] dated May 25, 2005, petitioners requested the bank to comment on the proposed release of the collaterals and full payment of the loan. Supposedly, during a meeting, the representatives of the parties have already agreed on the value assigned to each collateral. However, such was without the concurrence of the bank's management.

Petitioners claimed that they needed the properties as collateral for their loan with the International Exchange Bank (I-Bank). They also alleged that Metrobank did not agree to their proposal to consider the amount of ₱40 Million as full payment of their outstanding balance; instead, it made a counter-proposal for petitioners to pay ₱48,000,000.00. Purportedly, petitioners were amenable to this figure but they still needed to secure the bank's conformity.

In a letter[29] dated May 26, 2005 addressed to Metrobank, Jose Hernandez, one of the sureties, asked for confirmation regarding the release of some collaterals from mortgage that would be equivalent to the properties' loan values. He likewise cited the proposition to pay ₱48 Million as full settlement of the loan (computed from a supposed balance of ₱60 Million less ₱12 Million or a 20% discount).

In a letter[30] dated June 20, 2005, petitioners submitted a modified proposal for the payment of their loan. They asked for the release of some collaterals upon payment of ₱35 Million and undertook to put up their Alabang

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[22] *Records*, pp. 68-78.
[23] Id. at 201-204.
[24] CA *rollo*, pp. 105-106.
[25] Id. at 107.
[26] Id. at 108.
[27] Id. at 112.
[28] Id. at 111.
[29] Id. at 113.
[30] Id. at 114.

property as additional collateral for their loans. They likewise requested the bank to stop charging interests and penalties while negotiations were ongoing. As such, they committed to pay within 30 days or less if their request would be approved, especially when their other approved loan guarantee from Pag-IBIG Fund and Land Bank of the Philippines (funded by I-Bank) will expire by July 2005.

Notably, the petitioners engaged the services of independent appraisal companies[31] to determine whether their outstanding mortgaged properties would sufficiently cover their remaining obligation in the event Metrobank would allow the partial release of the collaterals.

However, in a letter[32] dated August 23, 2005, Metrobank rejected petitioners' proposal to pay ₱35 Million, finding the same way below the original principal amount of their outstanding loan of ₱50,128,193.07 exclusive of interest and charges, including ₱446,920.33 representing realty taxes which the bank paid in behalf of the petitioners. It further stated that the ₱35 Million proposal would not adequately cover the collaterals that they intend to release, while the remaining collaterals would not be enough to cover for the loan balance. It added that while the bank approved the petitioners' prior proposal to pay ₱20 Million in exchange for the release of some collaterals,[33] it did not come into fruition because the parties failed to agree on the particular collaterals to be released.

In any case, Metrobank sent a demand letter dated September 9, 2005[34] to Goldwell (for the payment of ₱51,657,500.11) and another dated September 12, 2005[35] to Nova (for the payment of ₱17,635,367.69). Both amounts were inclusive of interest and penalty charges as of July 31, 2005. Thus, the total amount for both debtor companies amounted to ₱69,292,867.80.[36] Similarly, Metrobank sent a demand letter[37] dated September 9, 2005 to the spouses Hernandez as sureties. The debtor companies conducted negotiations anew with Metrobank for the settlement of their obligation.

In a letter[38] dated September 15, 2005, the petitioners proposed to pay ₱40 Million instead of ₱35 Million, in light of their request for the partial release of their collaterals. They added that from the first tranche of ₱66 Million to be released by I-Bank, ₱40 Million would be paid directly to Metrobank for the partial release of the Pasay properties.

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[31] Appraisal by Cuervo Appraisers, Inc. dated June 22, 2005 that the property's fair market value (FMV) along F.B. Harrison Avenue corner Don Benito Hernandez Avenue, within Barangay 76, Zone 10, Pasay City, is ₱105,715,000.00, *records*, pp. 142-151; Appraisal by Valencia Appraisal Corporation dated July 8, 2005 that the property's FMV along F.B. Harrison Avenue corner Don Benito Hernandez Avenue is ₱104,999,000.00; *records*, pp. 152-163.

[32] CA *rollo*, pp. 82-83.

[33] TCT Nos. 129703, 129704, 129706, 438432, 438429, 438433, 198035, 438430, 438431 and 438435.

[34] *Records*, p. 61.

[35] Id. at 62.

[36] *Rollo*, p. 10.

[37] *Records*, p. 99.

[38] CA *rollo*, p. 119.

In a letter[39] dated October 14, 2005, the petitioners reiterated their proposal to Metrobank in their September 15, 2005 letter (payment of ₱40 Million) and their offer to put up their Alabang property as additional security for the remaining balance.

In a letter[40] dated January 23, 2006, Metrobank agreed to further restructure the debtor companies' accountabilities by proposing to reduce the amount to ₱67,373,247.22 with the following conditions: (1) that a partial payment of ₱55 Million be made by the debtor companies on or before February 3, 2006; (2) that they reimburse Metrobank for the realty tax which it paid in their behalf amounting to ₱446,920.33; and (3) that they reimburse the cost of appraisal of the properties in the amount of ₱24,500.00.

The petitioners sent a letter[41] dated January 31, 2006, requesting for further reduction of their total accountabilities to ₱60 Million, as they purportedly secured a ₱66 Million loan release from I-Bank.[42] They stated that they would use the remaining ₱6 Million from the I-Bank loan to construct a building. Afterwards, the petitioners sent another letter[43] dated February 20, 2006, wherein they asked for a clarification with regard to the collaterals that would be released upon their payment of the ₱55 Million.[44]

In response, Metrobank, in a letter[45] dated February 21, 2006, reiterated that it already agreed to reduce the total amount to ₱67,373,247.22 conditioned upon the debtor companies' partial payment of ₱55 Million (which would be applied to their discounted obligation, which, as of February 28, 2006, amounted to ₱68,576,218.24), as well as the reimbursement of the realty taxes and the cost of appraisal. Metrobank also agreed to cancel the mortgage on the Pasay properties covered by TCT Nos. 132278 and 143411 upon the petitioners' compliance with the new terms. Relevantly, Metrobank stated that the balance of the obligation shall be secured by the existing mortgages and a deed of real estate mortgage over the Alabang real properties covered by TCT Nos. T-17536 and T-177540.[46]

The petitioners, in a letter[47] dated February 23, 2006, however, requested that they be allowed to pay for the Pasay properties covered by TCT Nos. 132278 and 143411 first and that after such, they would settle other issues following their payment of ₱55 Million. In its letter[48] dated February 24, 2006, Metrobank reminded petitioners about the stipulations in their February 21,

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[39] Id. at 120.
[40] *Rollo*, p. 308.
[41] Id. at 310.
[42] Id. at 470-471; in relation to the use of Pag-Ibig Fund, *see also* pp. 472-473.
[43] Id. at 311.
[44] Id. at 10-11.
[45] Id. at 312-313.
[46] Id. at 11.
[47] Id. at 314.
[48] Id. at 315.

2006 letter and that they had not made any payments. In view thereof, Metrobank informed petitioners that it cannot grant their request to pay for the Pasay properties for ₱55 Million, as the bank already granted them several concessions notwithstanding its rights as a secured creditor.

The petitioners also asked for a meeting with Metrobank to negotiate a settlement in a letter[49] dated February 27, 2006. Thereafter, in a letter[50] dated March 2, 2006, the petitioners inquired whether Metrobank would reconsider its decision and include their real properties in Alabang covered by TCT Nos. T-17536 and T-177540 as additional collateral. Metrobank, in a letter[51] dated March 2, 2006, stated that while it was willing to consider a proposal for the settlement of the petitioners' obligation, it required that such proposal be reduced in writing. Metrobank repeated the terms and conditions of the previously approved settlement and declared that it would no longer entertain any proposal that is a mere modification or a revision of the same.[52]

Moreover, in a letter[53] dated March 15, 2006, Metrobank explained that the sufficiency of properties presented as collaterals was based on the loan value and not the appraised value. It added that the total loan value available to the borrower was equivalent to 60% of the appraised value of its mortgaged properties. Provided that the debtor companies abide by the terms in the discounted accountabilities (partial payment of ₱55 Million), the remaining liability would amount to not less than ₱13,576,218.24 (as the amount continues to increase until petitioners actually pay). The release of the Pasay properties from mortgage would result in the reduction of the total loanable value of the remaining collaterals to ₱12,000,000.00, more or less, because two of the existing collaterals were abutting properties and three other lots were the subjects of contracts to sell to third persons. In view of these, adding the Alabang properties as collateral, although occupied by illegal settlers and prone to prolonged flooding, which petitioners offered during the negotiations, would be necessary.[54]

The debtor companies, in a letter[55] dated March 28, 2006 asserted that the appraised values of their mortgaged properties and their corresponding total loan values (with the lowest loan value of the remaining mortgaged properties in the amount of ₱12,425,020.80), were more than enough to cover the remaining liabilities. They asked if the bank would still require additional collaterals and would entertain a full payment of the loan but less charges, since the bank had continuously refused to accept their payment for the Pasay properties which they wished to release from the mortgage.

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[49] Id. at 317.
[50] Id. at 319.
[51] Id. at 318.
[52] Id. at 11.
[53] Id. at 320-321.
[54] Id. at 11-12.
[55] Id. at 322-323.

Metrobank, in a letter[56] dated May 26, 2006 pointed out that the petitioners had not made any payment. It countered that the remaining balance after the payment of ₱55 Million would be ₱13,576,218.24 (as of February 28, 2006). As such, the value of the existing collaterals after the release of the mortgage over the Pasay properties would be insufficient to cover the remainder of the obligation. It reminded petitioners that their deadline to settle was on February 24, 2006. Yet, three months after, the petitioners did not confirm whether the terms would be accepted or not.[57]

Around August 2006, the debtor companies referred their concerns to the Bangko Sentral ng Pilipinas (BSP) for mediation. Consequently, the BSP required both parties to send their respective proposals and comments to settle the matter.[58]

In a letter[59] dated September 22, 2006,[60] the petitioners informed the BSP of the varying valuations made by the independent appraisers and Metrobank's in-house appraisers, which appeared to be lower. The petitioners questioned Metrobank's reason for asking a higher payment and additional collaterals when the remaining collaterals sufficiently covered the loan obligation, especially after the offer to pay ₱40 Million.

The petitioners, in a letter[61] dated September 22, 2006 to Metrobank, submitted a settlement proposal with a computation of their outstanding obligation as of August 31, 2006 amounting to ₱52,891,262.32, broken down as follows:

Outstanding Obligation	₱43,293,667.00
Add: Interest (08/18/01 to 08/31/06) 8% 1,839 days	17,450,313.12
Realty taxes paid by Metrobank	446,920.35
Less: Payments	(8,299,638.15)
Total Amount Due	**₱52,891,262.32**

Metrobank reiterated in its letter[62] dated November 22, 2006 that it had not received a single payment from the debtor companies despite the restructuring of their loans. They had paid neither the real estate taxes due on the mortgaged properties nor the fire insurance policies covering the same. The bank asserted that as of November 30, 2006, petitioners' outstanding obligation already ballooned to ₱84,646,384.60, from ₱43,293,677.00 as claimed by the

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[56] Id. at 324-325.
[57] Id. at 12.
[58] Id. at 326-327, 336-343.
[59] CA *rollo*, pp. 121-122.
[60] The document was dated September 22, 2005 but most likely it should be September 22, 2006 since the mediation before the BSP commenced in 2006.
[61] *Rollo*, p. 328.
[62] Id. at 329-330.

debtor companies. Metrobank clarified that the payment, which the debtor companies indicated in the above breakdown (₱8,299,638.15), referred to interest payments made in 2004, which was already applied in the outstanding obligation of that year and hence, cannot be applied to the current balance.[63] Metrobank appended the debtor companies' consolidated statement[64] of account as of October 31, 2006, as follows:

Nova Northstar Realty Corp.		
Principal Amount	15,893,186.75	
Past Due Interest (07.31.04 – 10.31.06)	5,100,406.65	
Penalty on Past Due Interest	876,978.57	
Penalty on Scheduled Principal Amortization	882,397.59	
Real Property Tax Paid by Metrobank (dtd 04.12.05)	447,820.33	
Interest on Real Property Tax (447,820.33 x 14.25% x 567/365)	99,130.86	**23,299,920.75**
Goldwell Properties and Resources, Inc.		
Principal Amount	46,554,305.58	
Past Due Interest (07.31.04 – 10.31.06)	10,484,284.71	
Penalty on Past Due Interest	2,568,890.57	
Penalty on Scheduled Principal Amortization	2,583,008.80	**62,190,489.66**
Total Amount as of October 31, 2006		**₱85,490,410.41**

Regrettably, the parties did not arrive at a settlement during the mediation proceedings before the BSP.

Eventually, the petitioners filed the instant Complaint[65] for Specific Performance, Accounting and Damages with Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order dated February 1, 2007 against Metrobank before the RTC of Makati, Branch 59 and prayed for the following reliefs:

> a) That, upon plaintiffs['] filing a bond in an amount which this Honorable Court may fix, a temporary restraining order and subsequently a writ of preliminary injunction be immediately issued, restraining and enjoining Metrobank, from initiating foreclosure proceedings upon the plaintiffs' mortgaged properties;

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[63] Id. at 12-13.
[64] Id. at 331-335.
[65] Id. at 87-98; Civil Case No. 07-183.

b) That, after trial, judgment be rendered making said preliminary injunction permanent;
c) That, Metrobank be ordered to make an accounting of the outstanding loan obligations and consider and apply the appraisal values submitted by the two (2) independent appraisal companies, A.U. Valencia, Philippine Appraisal Company and Cuervo Appraisers in determining the real values of the mortgaged properties;
d) That Metrobank be ordered to allow and make partial release of mortgaged properties upon payment of its corresponding loan value;
e) That, Metrobank be ordered to remove the imposition of the shocking penalty charges on both the past due interest and principal amount of obligation;
f) That, Metrobank be ordered to pay the sum of ₱1,000,000.00 as moral damages, ₱1,000,000.00 as exemplary damages and ₱100,000.00 as attorney's fees.[66]

The petitioners presented their accountant,[67] Yolanda Bambao (Bambao), who affirmed that the debtor companies had been transacting with Metrobank since 1994 and that the loans in question were "renewals."[68] She averred that they already paid ₱6,733,000.00 inclusive of interest, charges, penalty charges, and VAT.[69] Additionally, she asserted that after restructuring, the petitioners had a total obligation of ₱62 Million.[70] Bambao stated that the petitioners had been paying their dues until Metrobank's refusal to partially release the collaterals upon payment of the loan equivalent.[71] This came as a surprise to the petitioners because the bank, in the past, used to do so.[72] Nonetheless, she admitted that the petitioners did not actually tender ₱50 Million that they proposed to pay during the mediation.[73]

Joselito Hernandez, one of petitioners' business consultants,[74] testified that while the petitioners did not agree with Metrobank's valuation of the properties up for collateral, they accepted it anyway to obtain the loans.[75]

Contrariwise, Metrobank presented Myruh Jacinto, a branch operation officer of the bank,[76] who averred that the petitioners obtained 12 secured loans between February 2001 to June 2001 through one of their sureties.[77] A certain Frederick Bagang, then the loan clerk who handled petitioners' account,[78] also testified that the petitioners' account supposedly became past due in August 2001.[79]

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[66] Id. at 93-94.
[67] TSN, March 19, 2007, p. 5.
[68] Id. at 34-35.
[69] Id. at 7.
[70] Id. at 9.
[71] Id. at 13.
[72] Id. at 14, 35-36.
[73] Id. at 29-30.
[74] TSN, August 28, 2007, p. 4.
[75] Id. at 22-23.
[76] Rockwell Center Branch; TSN, June 18, 2007, p. 7.
[77] TSN, June 18, 2007, p. 9.
[78] TSN, December 10, 2007, p. 8.
[79] Id. at 9-10.

Metrobank submitted the Judicial Affidavit[80] of Atty. Benjamin B. Fernando, Jr. (Atty. Fernando), the bank's legal officer, who affirmed Metrobank's allegations and defenses. He asserted that the petitioners participated in the mediation proceedings before the BSP in bad faith considering that their Complaint (filed on February 27, 2007) was prepared as early as February 1, 2007, or 12 days before the last mediation conference previously set by the parties on February 13, 2007. Petitioners even agreed to explore the possibility of an amicable settlement within 30 days from the said conference.

Atty. Fernando also alleged that the Secretary's Certificate[81] attached to the petitioners' Complaint showed that petitioners had already decided to file a legal action against Metrobank as early as January 2007, when the mediation proceedings before the BSP were still ongoing. Hence, petitioners' request for the BSP to intervene was meant to delay Metrobank in exercising its legal rights, even while the bank chose to defer legal action during the pendency of the mediation proceedings.

Relevantly, the petitioners submitted a Manila Bulletin news excerpt[82] dated July 6, 2006, wherein Metrobank advertised its competitive interest rate of as low as 8% per *annum*. Note, however, that this pertained to properties up for auction in 2006, a different offering by the bank, as opposed to petitioners' loan obligation incurred in 2001.[83]

Also, to show that their collaterals were subjects of an extrajudicial sale, the petitioners submitted the following: Notice of Extra-Judicial Sale[84] dated November 17, 2008 (Pasay); Notice of Extra-Judicial Sale[85] dated November 21, 2008 (Laguna); Notice of Extra-Judicial Sale[86] dated November 26, 2008 (Pasay); and Notice to Parties of Sheriff's Public Auction Sale[87] dated November 28, 2008 (Pasay).

To protect their interests, petitioners also filed a Petition[88] for Injunction With Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order (TRO) on January 13, 2009 before the RTC of Pasay City, Branch 114.

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[80] *Records*, pp. 208-213.
[81] *Rollo*, pp. 96-98.
[82] *Records*, p. 164.
[83] Id. at 166.
[84] CA *rollo*, pp. 138-142.
[85] Id. at 131
[86] Id. at 133-135.
[87] Id. at 136-137.
[88] Id. at 63-80; Civil Case No. R-PSY-09-09126-CV.

Ruling of the Regional Trial Court:

In a Decision[89] dated July 14, 2008, the RTC dismissed the Complaint for lack of merit.[90] It found that the DSAs stipulated that in case of petitioners' default, Metrobank could revert to the original obligation amounts of ₱19,539,999.00 and ₱55,477,836.22, enforce the terms of the original loan documents, and proceed with the extrajudicial foreclosure of the mortgages. It was undisputed that petitioners again defaulted after the execution of the DSAs. They claimed that the delay was due to the bank's delay in formalizing the agreement on the change in payment scheme (monthly to quarterly payments). However, this allegation remained unsubstantiated.

The RTC found that Metrobank presented proof that the petitioners' last payment was on August 2, 2004, showing that their default was not due to the bank's alleged delay. Hence, it held that the petitioners' claims that their default was caused by Metrobank's delay and imposition of exorbitant interest rates and penalty charges were unfounded. It noted that Metrobank waived up to 75% of the outstanding penalty charges and substantially reduced the past due interests. In addition, Metrobank imposed a 10% interest rate on the petitioners' remaining balance, which is not unconscionable.[91]

Moreover, the RTC also found that as of October 31, 2006, when petitioners brought the issue to the BSP, the petitioners' total outstanding obligation amounted to ₱85,490,410.01 based on the repriced interest rate of 14.25% per *annum*. Petitioners acknowledged their outstanding obligation before the BSP and even requested for another restructuring. In relation to this, Metrobank proved that it agreed to substantially decrease petitioners' liabilities to ₱67,373,247.22 subject to the condition that petitioners make a partial payment of ₱55 Million and reimburse the bank for the realty tax payments which it made in their behalf.[92]

The RTC observed that the petitioners merely employed delaying tactics and were not serious about settling their accountabilities. They raised new matters every time Metrobank would reiterate its settlement offer. Thence, the petitioners' indebtedness rose to ₱85,490,410.41 as of October 31, 2006 as reflected in the statement of account prepared by Metrobank, which petitioners even admitted.[93]

The RTC ruled that petitioners could not force Metrobank to accept the revised appraisal of the mortgaged properties long after the loans were granted and became past due especially since they already assented to the bank's appraisal prior to the approval of the loan applications. Petitioners could have rejected Metrobank's appraisal and applied for loan with another bank. Since

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[89] *Supra*, note 3.
[90] *Rollo*, p. 151.
[91] Id. at 149-150.
[92] Id. at 150.
[93] Id. at 150-151.

petitioners voluntarily acceded to the valuation, they are estopped from claiming that the bank's valuation was too low. The trial court also held that the parties are not entitled to their respective claims for damages without sufficient proof.[94]

Aggrieved, petitioners filed a motion for reconsideration,[95] which the RTC denied in an Order[96] dated October 23, 2008. They then appealed[97] to the CA.

Metrobank filed a Motion to Dismiss[98] before the CA on the ground of forum shopping. However, it was denied by the appellate court in a Resolution[99] dated June 29, 2010, finding no forum shopping on the part of the petitioners since the issue in the Makati case (the instant action) is for accounting while the Pasay case involved the alleged fraudulent execution of the continuing surety and DSAs.

Meanwhile, in a letter[100] dated December 23, 2010, Metrobank noted petitioners' offer to buy back the Pasay properties for ₱68 Million. However, it did not come into fruition since Metrobank demanded the amount of ₱84 Million.

The petitioners also submitted Metrobank's letter[101] dated August 4, 2011 addressed to a certain Mr. Daimler Flores, stating that his offer to purchase the Pasay properties was approved at ₱45 Million. Petitioners likewise submitted Metrobank's letter[102] dated January 28, 2013 to a company named South Eastern Belle Holdings, Inc., which indicated that the minimum bid price for the Pasay Properties was ₱47.5 Million. The petitioners claimed that both amounts were significantly lower than their offer back in 2010.

Ruling of the Court of Appeals:

The CA, in its assailed January 31, 2013 Decision,[103] affirmed the judgment of the RTC *in toto*.[104] It found that the DSAs stipulated that in case of petitioners' default in the payment of any amount due,[105] Metrobank had the option to enforce the provisions of the original loan documents. The said provisions stated in particular that the debtor companies were bound to pay not only the principal loan amount but also past due interest at 16% per *annum*, VAT

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[94] Id. at 151.
[95] Id. at 152-167.
[96] *Supra*, note 4.
[97] CA *rollo*, pp. 27-30.
[98] Id. at 32-42.
[99] Id. at 285-288.
[100] *Rollo*, p. 495.
[101] Id. at 496-500.
[102] Id. at 501-504.
[103] *Supra*, note 1.
[104] *Rollo*, p. 25.
[105] Id. at 16.

at 10% per *annum*, and penalty charges at 18% per *annum*.[106] The appellate court noted that in its Answer to the Complaint, Metrobank explained "that the past due interest charges and the penalty charges on the principal and unpaid interest assessed on [debtor companies] were specifically stated in the promissory notes and their corresponding disclosure statements. Hence, although the [DSAs] specifically referred only to penalty on all defaulted amortizations upon their default, [Metrobank] was not precluded, but in fact entitled, and justified to revert to the terms and conditions of the original loan documents, which include the payment of penalty on both the principal and the interest thereon."[107]

The appellate court did not find merit in the debtor companies' claim that since the past due interests were capitalized and charged interest at 10% per *annum* in the DSAs, the interests were compounded without their agreement. The appellate court held that Article 1959[108] of the Civil Code states that without prejudice to the provisions of Article 2212,[109] interest due and unpaid shall not earn interest. However, the contracting parties may stipulate to capitalize the interest due and unpaid, which, as added principal, shall earn new interest. Furthermore, it affirmed that penalty charges on past due interest are sanctioned by Article 1959 since penalty clauses can be in the form of a penalty or compensatory interest.[110]

The CA found that the petitioners voluntarily acceded to the terms of the DSAs through their authorized representatives. In particular, the debtor companies agreed to the capitalization of the outstanding past due interest as of July 31, 2003, the rate of which was reduced from 16% to 12% per *annum*, including the imposition of interest of 10% per *annum* on such capitalized amount, with quarterly repricing thereafter based on the prevailing market rate. Stated differently, they assented to the imposition of interests on the new loan balance, which includes the capitalized outstanding past due interest.[111]

The appellate court did not agree with the petitioners' contention that the 18% per *annum* penalty of the defaulted amortization itself, coupled with the "repriced interest" rate of 14.25% per *annum*, is iniquitous. The CA ruled that the stipulated interest rate until full payment of the loan constitutes the monetary interest on the obligation, which is allowed under Article 1956[112] of the Civil Code. It declared that "[i]n the original loan documents, the interest rate was

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[106] Id. at 17.
[107] Id. at 17.
[108] CIVIL CODE, Art. 1959.
Art. 1959. Without prejudice to the provisions of article 2212, interest due and unpaid shall not earn interest. However, the contracting parties may by stipulation capitalize the interest due and unpaid, which as added principal, shall earn new interest.
[109] CIVIL CODE, Art. 2212.
Art. 2212. Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point.
[110] *Supra*, note 109.
[111] *Rollo*, pp. 17-18.
[112] CIVIL CODE, Art. 1956.
Art. 1956. No interest shall be due unless it has been expressly stipulated in writing.

pegged at 16% [per *annum*]. In the restructuring of the loan obligation, the past due interest was recomputed at 12% [per *annum*], and the interest due under the [DSAs] was pegged at the rate of 10% [per *annum*], repriceable quarterly depending on the prevailing market rate. It was eventually repriced at 14.25% [per *annum*], a rate still lower than the originally stipulated interest rate of 16% [per *annum*]. An interest rate of 14.25% [per *annum*] is reasonable."[113]

The CA also ruled that the stipulated rate in the form of a penalty charge is separate and distinct from the interest on the principal of the loan. The stipulated rates may be reduced by the courts if it is iniquitous or unconscionable, in accordance with Article 2227[114] of the Civil Code. In addition, surcharges and penalties, which the debtor agreed to pay in case of default, partake of the nature of liquidated damages under Section 4, Chapter 3, Title XVIII of the Civil Code.[115]

The appellate court noted that in the DSAs, Metrobank waived 75% of the penalty charges under the original loan documents. When the petitioners defaulted again under the DSAs, Metrobank could have enforced the terms in the original loan documents, including the waived penalty charges of 75%. However, it did not do so. It still charged 18% penalty charges on the amortizations and past due interests. Thus, the CA found that such imposition was reasonable given the amount that Metrobank already waived under the DSAs.[116]

Upon perusal of the exchange of correspondence between the parties, the CA observed that the interest rates and penalty charges were not the only issue. Apparently, the debtor companies asked for a change in the manner of payment of the liabilities and the discounting of their total obligation, without regard to the interest rates and penalty charges. Before the case was referred to the BSP, the petitioners never questioned the amounts indicated in Metrobank's demand letters upon them. At one point, the petitioners only requested for a further reduction of their total obligation from the already reduced amount of ₱67,373,247.22 to ₱60 Million. When Metrobank rejected the request, the petitioners impliedly accepted the computation when they stated in a letter that after a partial payment of ₱55 Million, the remaining balance would still be ₱13,576,218.24. It was only when the mediation in the BSP was conducted that petitioners insisted that their liability, inclusive of penalties and interest, which they alleged should only be at the rate of 8% per *annum*, amounted to ₱52,891,262.32 only.[117]

Moreover, the CA agreed with the RTC that Metrobank could not be

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[113] *Rollo*, p. 18.
[114] CIVIL CODE, Art. 2227.
Art. 2227. Liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable.
[115] *Rollo*, p. 18.
[116] Id. at 19.
[117] Id.

obligated to accept the petitioners' appraisal of the mortgaged properties, which was conducted long after the loans were granted and became past due. As such, the petitioners are now estopped from claiming that the valuation of Metrobank is too low since they did not question it before the loans were approved.[118] It additionally noted that during the trial, the petitioners were aware that the appraised values of their properties were lower than the appraisal made by the independent appraisers. However, the petitioners still proceeded to obtain loans from Metrobank and accepted the valuations notwithstanding their alleged objections.[119]

Thence, Metrobank justifiably required for additional collaterals in exchange for the release of the mortgage on the Pasay properties. In Metrobank's letter dated March 15, 2006, it explained that the resulting loan balance after the partial payment of ₱55 Million would be ₱13,328,400.00. In contrast, the value of the remaining collaterals after the release of the Pasay properties would only amount to ₱12,425,020.80, which is not sufficient to cover the remaining loan balance. During the negotiations, the petitioners offered the Alabang properties in exchange for the release of the Pasay properties. When Metrobank agreed to accept the Alabang properties, the petitioners suddenly backed out then asked the bank to no longer require the additional collateral because the Alabang properties were allegedly oversecured. However, Metrobank refuted this allegation.[120]

Granted that the appraised values of the mortgaged properties in 2005 were indeed higher than the values used by Metrobank at the time the loans were granted, the petitioners did not show proof that they made attempts to pay. The offer to pay ₱55 Million remained a mere offer.[121] Finally, the appellate court ruled that the parties are not entitled to damages and attorney's fees for lack of basis.[122]

Undeterred, the petitioners asked for a reconsideration,[123] reiterating that Metrobank's imposition of penalty on past due interest was unilateral and without justification, that the imposition of 18% per *annum* penalty charge is iniquitous, and that Metrobank charged compounded interest without prior agreement between the parties.

In response,[124] Metrobank contended that the imposition of penalty charge on past due interest was in accordance with the DSAs, which clearly provided that in the event of default, the bank has the option to enforce the terms of the original loan documents, specifically the promissory notes. Under the promissory notes, the petitioners bound themselves to pay the principal

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[118] Id. at 20.
[119] Id. at 20-22.
[120] Id. at 22.
[121] Id. at 23-24.
[122] Id. at 24-25.
[123] CA *rollo*, pp. 82-86.
[124] Id. at 396-402.

obligations, past due interest at 16% per *annum*, VAT at 10% per *annum*, and penalty charges at 18% per *annum*. Hence, "while the [DSAs] indeed referred only to the imposition of penalty charges on all unpaid amortization payments, [Metrobank] was not precluded, but was in fact allowed by contractual stipulation, to revert back to the terms and conditions of the original promissory notes and Disclosure Statements that clearly provided for the imposition of penalty charges on both unpaid principal and interest charges."[125]

Metrobank argued that the imposition of 18% per *annum* penalty charge is standard industry rate. Petitioners assented to the imposition of the interest on the new loan balance, which included outstanding past due interest as reflected in the DSAs. As such, "the capitalization of the outstanding past due interest as of July 31, 2003 that was reduced from 16% [per *annum*] to 12% [per *annum*] as well as the imposition of interest at the rate of 10% [per *annum*] on such a capitalized amount repriceable every quarter based on the prevailing market rate were voluntarily agreed upon by both parties in the [DSAs]."[126] Thus, Metrobank opined that the interest rates should be assessed on a case-to-case basis.[127]

The CA denied the petitioners' motion for reconsideration in a Resolution[128] dated November 7, 2013. The petitioners then filed the instant Petition for Review on *Certiorari*[129] before the Court and raised the following:

Issues

> 6.1 Whether or not Metrobank should be ordered to make an Accounting of petitioners' obligations and consider the appraisal values submitted by the two (2) independent appraisal companies in determining the value of the mortgaged properties;
>
> 6.2 Whether or not Metrobank should be ordered to allow and make a partial release of the mortgages over TCT Nos. 132278 and 143411;
>
> 6.3 Whether or not the penalty charges on both the past due interest and principal amount of obligation imposed by Metrobank are excessive, iniquitous and unconscionable; and
>
> 6.4 Whether or not petitioners' claims for damages should be granted.[130]

The petitioners assert that Metrobank unilaterally and unjustifiably imposed penalty charges on scheduled principal amortization and on past due interest. They also question how Metrobank computed their liability in the sum of ₱85,490,410.00.[131] They assert that the 18% per *annum* penalty of the

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[125] Id. at 399.
[126] Id. at 400.
[127] Id. at 400-401.
[128] *Supra*, note 2.
[129] *Rollo*, pp. 34-81.
[130] Id. at 58-59.
[131] Id. at 59-60.

defaulted amortization itself, coupled with the repriced interest rate of 14.25% per *annum*, crossed the threshold of reasonableness and is iniquitous.[132]

They contend that in the DSAs, the past due interest was capitalized and charged interest at 10% per *annum* without prior agreement. Moreover, they aver that the rate of 16% per *annum* was double the bank's advertised rate of 8% per *annum* (for loans involving the purchase of acquired assets up for auction, as shown in a news excerpt dated June 6, 2006). In view of this, the petitioners insist that the amounts and charges, especially the imposition of penalties, should be accounted for and justified, considering that the interest rates are unconscionable.[133]

The petitioners maintain that they have been religiously paying their accountabilities and that Metrobank's delay in approving their request for a modification in the payment schedule caused their default.[134] If the interest rates are found to be iniquitous, then their offer of full payment in the amount of ₱52,891,262.32 would be reasonable. If so, Metrobank would not be justified in refusing the said amount as full payment and then demand the exorbitant amount of ₱85,490,410.41.[135] Had Metrobank accepted the offer of ₱55 Million as partial payment and agreed to release the Pasay properties, there would have been a complete and final settlement already.[136] They would not have asked for the restructuring of their loans and for the assistance of the BSP if they intended to abscond from their liabilities.[137]

They point out that it was unfortunate that notwithstanding the independent appraisal reports, Metrobank still refused to allow the partial release of the collaterals. Based on the independent appraisal reports, and if partial release was done, the remaining collaterals would still be enough to secure their unpaid obligations.[138] When they signed the DSAs, the contents and implications thereof were not properly explained to them. They were not aware that they were not allowed to make a partial release of collaterals unless they pay the entire loan obligation because it was already consolidated into one contract. They allege that the agreement was a contract of adhesion and violated the principle of mutuality of contracts under Article 1308[139] of the Civil Code. The non-allowance of partial release of collaterals violates Article 2130[140] of the Civil Code.[141]

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[132] Id. at 60.
[133] Id. at 62-65.
[134] Id. at 65-66.
[135] Id. at 67.
[136] Id. at. 68.
[137] Id. at 69.
[138] Id. at 70.
[139] CIVIL CODE, Art. 1308.
Art. 1308. The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them.
[140] CIVIL CODE, Art. 2130.
Art. 2130. A stipulation forbidding the owner from alienating the immovable mortgaged shall be void.
[141] *Rollo*, pp. 70-73.

The petitioners assert that the restructured amounts and the conditions imposed upon it, *i.e.*, partial payment of ₱55 Million (which is over 80% of the entire account as computed by Metrobank) and payment of real estate taxes to be settled within 10 days, were stringent.[142] In any event, the difference between the remaining balance of the obligation and the appraised value of the remaining collaterals was very minimal and did not justify Metrobank's rejection of its proposal for partial payment and release of the Pasay properties.[143]

They opine that Metrobank is estopped from raising the defense of indivisibility of mortgage as the partial cancellation of mortgage relates to the partial release of the mortgaged property, as can be seen in a notation after paragraph 6[144] (in small words) of Goldwell's DSA.[145] They posit that while there was an agreed appraisal valuation of the mortgaged properties, such is not a condition *sine qua non* for the implementation of a valid and fair obligation. The contracting parties are allowed by law to modify and adjust the terms of their mortgage when implementation has become so difficult as to be manifestly beyond the contemplation of the parties, and the obligor may also be released therefrom pursuant to Article 1267[146] of the Civil Code.[147]

The debtor companies also allege that Metrobank prevented them from selling their properties and schemed to be the highest bidder in the foreclosure sale so that it can acquire the properties at a relatively low price. Purportedly, an officer of the bank informed them that there was a BSP circular barring the former owners of foreclosed properties from joining the auction. After BSP clarified that there was no such circular, the petitioners confronted the bank, which in turn admitted that such was its own policy.[148] The petitioners additionally allege that Metrobank set the bid price at ₱47,500,000.00 in 2013, which was lower than the buyback price which they offered in 2010.[149]

Joselito Hernandez, one of the sureties, submitted an Affidavit[150] to support the claims of petitioners. He averred that he and his wife were forced to sign the DSAs as they were not given the choice to negotiate the terms of the same.

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[142] Id. at 74.
[143] Id. at 76.
[144] Id. at 304.
[145] Id. at 77-78.
[146] **Art. 1267.** When the service has become so difficult as to be manifestly beyond the contemplation of the parties, the obligor may also be released therefrom, in whole or in part.
[147] *Rollo*, p. 78.
[148] Id. at 426-427.
[149] Id. at 427.
[150] Id. at 437-446.

On the other hand, Metrobank argues that the petitioners never contested the fact that they are indebted to the bank. Similarly, they never disputed their total outstanding obligation and only questioned the interests and penalties when the bank eventually refused to further reduce their liabilities. This happened after the bank already extended them generous terms and conditions, even after the restructuring of the loans. Simply put, the petitioners raised the issue of unconscionable interests and penalties as an afterthought.[151] It points out that the debtor companies never alleged in its Complaint that the interest and penalty charges had no contractual basis.[152] The bank asserts that the petitioners continued to haggle until it became obvious that they were not capable of paying their outstanding obligation. They requested for a drastic reduction of their indebtedness, which the bank was not amenable to.[153]

Metrobank states that even during the mediation proceedings before the BSP, the petitioners never adhered to previously agreed terms and conditions but continuously asked for a reduction of their obligation. It has not received payment from the petitioners and it even paid the real estate taxes due on the mortgaged properties and premiums on fire insurance policies in behalf of the petitioners.[154]

The bank insists that the interest rates and penalty charges are reasonable and that the petitioners assented to the provisions of the DSAs.[155] The interest rate prior to the execution of the DSAs was 14.25% per *annum*, which was very competitive under the existing market standards. The 18% per *annum* penalty charge was likewise a standard rate and initially stipulated by the parties. Yet, Metrobank agreed to condone 75% of the total 18% per *annum* penalty charges upon the execution of the DSAs.[156] It maintains that the petitioners delayed the negotiation process by refusing to adhere to the previously settled terms and conditions.[157]

Metrobank contends that it is not obliged to accept the appraisal reports submitted by the petitioners and that the latter already agreed to the bank's valuation of the real properties as collateral when they applied for the loans. They had the option not to accept the bank's valuation if they believed that the said estimate was unfair or unreasonable, and they could have secured a loan from another bank. Yet, they accepted Metrobank's valuation because they knew that the same was the most reasonable under the circumstances. Thus, to compel Metrobank to accept the petitioners' valuation after they had already defaulted is contrary to law and violates the principle of mutuality of contracts.[158]

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[151] Id. at 282-283.
[152] Id. at 283.
[153] Id. at 283-284.
[154] Id. at 287-288.
[155] Id. at 288-290.
[156] Id. at 290.
[157] Id. at 291.
[158] Id. at 291-292.

As to its alleged refusal to petitioners' partial payment and release of the Pasay properties, the bank argues that the petitioners never intended to pay their obligation and merely delayed the process when they feigned ignorance and tried to change previously agreed upon terms.[159] Metrobank denies petitioners' claim that it prevented them from selling their mortgaged properties to interested third persons. The bank reasoned that its refusal to partially release the mortgaged properties did not amount to a prohibition against alienating the real properties sought to be released. If the bank agreed to this, it would not have only resulted in a drastic reduction of its collateral cover but it would have also been contrary to law in view of the indivisibility of mortgage pursuant to Article 2089 of the Civil Code.[160]

Metrobank denies that the petitioners entered into contracts of adhesion as they willingly and voluntarily executed the DSAs, and their operations are run by educated and seasoned business people who knew what they were doing. Moreover, the terms of the agreements were simple, clear, and even beneficial to the petitioners.[161] There was no violation of the mutuality of contracts as the petitioners knowingly accepted the provisions of the DSAs without coercion.[162] Finally, petitioners are not entitled to damages, especially when the parties did not stipulate such to be an issue for resolution before the RTC.[163]

Thus, the main issue is whether Metrobank correctly computed the total obligation of the petitioners considering the interest rates and penalty charges included therein.

Our Ruling

The petition is partly meritorious.

It is settled that the Court need not re-assess the evidence, especially those involving factual matters presented in the proceedings before the RTC and the CA. However, there are exceptions to such rule, "as when lower courts' findings are not supported by the evidence on record or are based on a misapprehension of facts, or when certain relevant and undisputed facts were manifestly overlooked that, if properly considered, would justify a different conclusion."[164] The instant case falls under the exceptions. Although the RTC and the CA had uniform findings and conclusions, their interpretation of the laws, rules, and jurisprudence in relation to the facts should still be critically assessed to accord justice to both parties.

Partial release of the collaterals cannot be allowed.

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[159] Id. at 293-294.
[160] Id. at 294-295.
[161] Id. at 295-296.
[162] Id. at 296.
[163] Id. at 297.
[164] *Spouses Silos v. Philippine National Bank*, 738 Phil. 156, 178 (2014).

The petitioners insist that Metrobank should have allowed the release of the Pasay properties upon their payment of the loan values of the said collaterals, as it had done in the past. Metrobank, on the other hand, argues that it cannot be compelled to do so pursuant to the doctrine of indivisibility of mortgage.

Article 2089 of the Civil Code states that:

> A pledge or mortgage is indivisible, even though the debt may be divided among the successors in interest of the debtor or of the creditor.
>
> Therefore, the debtor's heir who has paid a part of the debt cannot ask for the proportionate extinguishment of the pledge or mortgage as long as the debt is not completely satisfied.
>
> Neither can the creditor's heir who received his share of the debt return the pledge or cancel the mortgage, to the prejudice of the other heirs who have not been paid.
>
> From these provisions is excepted the case in which, there being several things given in mortgage or pledge, each one of these guarantees only a determinate portion of the credit.
>
> The debtor, in this case, shall have the right to the extinguishment of the pledge or mortgage as the portion of the debt for which each thing is specially answerable is satisfied.[165]

Under this provision, the "debtor cannot ask for the release of any portion of the mortgaged property or of one or some of the several lots mortgaged unless and until the loan thus secured has been fully paid, notwithstanding the fact that there has been a partial fulfillment of the obligation. Hence, it is provided that the debtor who has paid a part of the debt cannot ask for the proportionate extinguishment of the mortgage as long as the debt is not completely satisfied."[166] Thus, the fact that petitioners paid for the loan value of the Pasay properties is immaterial; the mortgage would still be in effect since the loans have not been fully settled.

Although Metrobank allowed the release of some properties from mortgage in the past, such would not bind the bank to grant the same concession every single time, particularly when it is evident that the petitioners were having difficulties settling their total obligation. To do so would place the bank in a disadvantageous position because it would have less collaterals to cover for the total accountability of the petitioners. More so when the petitioners suddenly refused to include the Alabang properties as additional collateral to cover the loans. Stated differently, to allow the release of the Pasay properties without full payment of the loans would be detrimental to Metrobank's status as a secured

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[165] CIVIL CODE, Art. 2089.

[166] *Spouses Yap v. Spouses Dy*, 670 Phil. 223, 247 (2011); *Metropolitan Bank and Trust Co. v. SLGT Holdings, Inc.*, 559 Phil. 914, 927-928 (2007).

creditor. The bank's previous practice of releasing the collaterals without full payment of the loan could not develop into an iron-clad rule, as a mere practice could not supersede what the law mandates.

Metrobank could not be compelled to adopt the valuation of the independent appraisers after the loans have already been obtained.

Petitioners insist that Metrobank's valuations of the mortgaged properties were significantly less than what the independent appraisers reported. Yet, in a letter[167] dated March 15, 2006, Metrobank clarified that the sufficiency of properties assigned as collaterals is based on the loan value and not the appraised value. It emphasized that the total loan value available to the borrower is equivalent to 60% of the appraised value of its mortgaged properties. Why the petitioners failed to acknowledge this information and repudiate it with proof is problematic.

The Court agrees with the RTC and the CA that the petitioners had the option to question Metrobank's the appraised values of the mortgaged properties before they obtained the loans. If they were not agreeable with Metrobank's valuations, they could have obtained loans from other banking institutions that will assign values to their collaterals that they are comfortable with. On this score, the Court has previously held that "[w]hen the law does not provide for the determination of the property's valuation, neither should the courts so require, for our duty limits us to the interpretation of the law, not to its augmentation."[168] Although this pronouncement pertains to the basis of the bid price of a mortgaged property that became the subject of foreclosure, by analogy, We can infer that courts cannot likewise dictate how banks should set the values of mortgaged properties for purposes of loan acquisition. In this case, the Court cannot compel Metrobank to accept the values pegged by the independent appraisers as insisted by the petitioners, lest We be suspected of meddling with management prerogative. Besides, the petitioners only raised this valuation issue after they have already obtained the loans.

The parties entered into binding contracts.

The principle of mutuality of contracts, found in Article 1308 of the Civil Code, states that a "contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them."[169] By inference, the petitioners are bound by the *valid* terms and conditions of the DSAs as their

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[167] *Rollo*, pp. 320-321.
[168] *Sycamore Ventures Corp. v. Metropolitan Bank and Trust Co.*, 721 Phil. 290, 300 (2013).
[169] CIVIL CODE, Article 1308.

representatives willingly executed the said contracts. In accordance with this principle, when the execution of the contract's terms is skewed in favor of one party, the contract must be rendered void.[170] This relates to the petitioners' claim that the DSAs were contracts of adhesion. However, We do not completely agree. In *Buenaventura v. Metrobank*,[171] *(Buenventura)* the Court explained that:

> A contract of adhesion is so-called because its terms are prepared by only one party while the other party merely affixes his signature signifying his adhesion thereto. Such contract is just as binding as ordinary contracts.
>
> It is true that we have, on occasion, struck down such contracts as void when the weaker party is imposed upon in dealing with the dominant bargaining party and is reduced to the alternative of taking it or leaving it, completely deprived of the opportunity to bargain on equal footing. Nevertheless, contracts of adhesion are not invalid *per se* and they are not entirely prohibited. The one who adheres to the contract is in reality free to reject it entirely, if he adheres, he gives his consent.
>
> x x x x
>
> Accordingly, a contract duly executed is the law between the parties, and they are obliged to comply fully and not selectively with its terms. A contract of adhesion is no exception.[172]

Since the DSAs referred to the restructuring of the petitioners' loans, such can hardly be considered as contracts of adhesion. The fact remains that the petitioners still had unpaid loan obligations, and that they sought the restructuring to eventually settle their admitted accountabilities. In the DSAs, the amount of their liabilities was lowered in consideration of their financial difficulties. Since the provisions of the DSAs are unambiguous, at least regarding the petitioners' obligation to pay the principal amount of the loans and the interests applicable prior to the execution of the DSAs, as well as the partial waiver and reduction of parts of the prior interests, these are controlling and should be enforced.

Buenaventura continues to state that "'when the language of the contract is explicit leaving no doubt as to the intention of the drafters thereof, the courts may not read into it any other intention that would contradict its plain impart.' Accordingly, no court, even this Court, can 'make new contracts for the parties or ignore those already made by them, simply to avoid seeming hardships. Neither abstract justice nor the rule of liberal construction justifies the creation of a contract for the parties which they did not make themselves or the

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[170] *Vasquez v. Philippine National Bank*, G.R. Nos. 228355 & 228397, August 28, 2019 citing *Spouses Silos v. Philippine National Bank*, supra, note 164.

[171] *Buenaventura v. Metropolitan Bank and Trust Co.*, 792 Phil. 237, 247 (2016) citing *Avon Cosmetics, Inc. v. Luna*, 540 Phil. 389 (2006).

[172] Id.

imposition upon one party to a contract of an obligation not assumed.'"[173]

The parties should bear in mind that Article 1159 of the Civil Code states that "[o]bligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith."[174] Thence, considering the original loan contracts, the promissory notes, the DSAs, and even the deeds of real estate mortgage, the petitioners bound themselves to settle the amounts being demanded by Metrobank.[175] However, their liability should be qualified, as will be discussed hereafter.

The monetary interest rate, penalty interest rate, and imposition of VAT are iniquitous.

While the principle of mutuality of contracts should prevail, Metrobank's valuation and imposition of the interest rates in the DSAs should still be assessed. "As a principal condition and an important component in contracts of loan, interest rates are only allowed if agreed upon by express stipulation of the parties, and only when reduced into writing. Any change to it must be mutually agreed upon, or it produces no binding effect."[176] Without a doubt, the parties entered into contracts that expressly stipulated the interest rates. The crucial issue, however, is whether these rates are unconscionable.

There are two types of interest, namely, monetary interest and compensatory/penalty interest. "Interest as a compensation fixed by the parties for the use or forbearance of money is referred to as monetary interest, while interest that may be imposed by law or by courts as penalty for damages is referred to as compensatory interest."[177] "Accordingly, the right to recover interest arises only either by virtue of a contract (monetary interest) or as damages for delay or failure to pay the principal loan on which the interest is demanded (compensatory interest)."[178]

As regards monetary interest, although the parties are "free to stipulate their preferred rate,"[179] the courts are "allowed to equitably temper interest rates that are found to be excessive, iniquitous, unconscionable, and/or exorbitant."[180] Thus, stipulated interest rates of "three percent (3%) per month or higher is

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[173] Id. at 248, citing *The Insular Life Assurance Company, Ltd. v. Court of Appeals and Sun Brothers & Company*, 472 Phil. 11 (2004).
[174] CIVIL CODE, Art. 1159.
[175] *Metropolitan Bank & Trust Co. v. Chuy Lu Tan*, 792 Phil. 70, 82 (2016).
[176] *Vasquez v. Philippine National Bank*, supra, note 170 citing *Security Bank Corp. v. Spouses Mercado*, G.R. Nos. 192934 & 197010, June 27, 2018.
[177] *Vasquez v. Philippine National Bank*, supra, note 170 citing *Hun Hyung Park v. Eung Won Choi*, G.R. No. 220826, March 27, 2019.
[178] *Isla v. Estorga*, G.R. No. 233974, July 2, 2018 citing *Pen v. Santos*, G.R. No. 160408, January 11, 2016, 776 Phil. 50 (2016).
[179] Id.
[180] Id., citing *Trade & Investment Development Corporation of the Philippines v. Roblett Industrial Construction Corporation*, 523 Phil. 360 (2006).

considered as excessive or unconscionable."[181] Alternatively, as per settled jurisprudence, a 24% per *annum* (or 2% per month) rate is not unconscionable.[182] Taking these into account, the interest rate of 14.25% per *annum* (or 1.1875% per month) upon the principal obligation in the case at bench should, in theory, be considered as a fair rate.[183]

We repeat and quote the CA's finding that "[i]n the original loan documents, the interest rate was pegged at 16% [per *annum*]. In the restructuring of the loan obligation, the past due interest was recomputed at 12% [per *annum*], and the interest due under the [DSAs] was pegged at the rate of 10% [per *annum*], repriceable quarterly depending on the prevailing market rate. It was eventually repriced at 14.25% [per *annum*], a rate still lower than the originally stipulated interest rate of 16% [per *annum*]. An interest rate of 14.25% [per *annum*] is reasonable."[184]

Similarly, the petitioners' insistence on using the 8% per *annum* advertised rate based on a news excerpt cannot be considered, as such interest rate pertained to loans incurred to pay for a property procured during a public auction and not to a loan contract like in this case. Besides, the loans here were obtained in 2001 (restructured in 2003) while the advertisement was posted in 2006.

However, the fact that these specific rates fall below the 3% per month threshold should **not** be the only factor in determining if the monetary interest rate is valid. The basis of the party tasked to impose the interest rate (Metrobank) and more importantly, the agreement of the other party (petitioners), should also be considered, notwithstanding the specification that the "prevailing market rate" should be set as a base point for any recalibration of interest rates. *Vasquez v. Philippine National Bank*[185] *(Vasquez)* is instructive on this matter:

> In the fairly recent case of *Security Bank Corp. v. Spouses Mercado*,[186] the petitioner therein likewise implemented a similar interest rate scheme wherein the respondents therein were made to pay 'Security Bank's prevailing lending rate[.]'[187]
>
> In the said case, likening Security Bank's imposition of the 'prevailing lending rate' to the 'prime rate plus applicable spread' which was deemed invalid in *Spouses Silos v. Philippine National Bank*, the Court held that imposing the 'prevailing lending rate' is *not synonymous* with the usual banking practice of

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[181] *Panacan Lumber Co. v. Solidbank Corp.*, G.R. No. 226272, September 16, 2020 citing *Spouses Mallari v. Prudential Bank (now Bank of the Philippine Islands)*, 710 Phil. 490 (2013), *Ruiz v. Court of Appeals*, 449 Phil. 419 (2013), and *Chua v. Timan*, 584 Phil. 144, 148 (2008).
[182] *Metropolitan Bank & Trust Co. v. Chuy Lu Tan*, supra note 175 at 83 citing *Spouses Mallari v. Prudential Bank (now Bank of the Philippine Islands)*, supra which cited *Villanueva v. Court of Appeals*, 671 Phil. 467, 478 (2011) and *Garcia v. Court of Appeals*, 249 Phil. 739 (1988).
[183] Id.
[184] *Rollo*, p. 18.
[185] *Vasquez v. Philippine National Bank*, supra, note 170.
[186] Id. citing *Security Bank Corp. v. Spouses Mercado*, supra, note 176.
[187] Id.

imposing the 'prevailing market rate.' The Court explained that the latter is valid 'because it cannot be said to be dependent solely on the will of the bank as it is also dependent on the prevailing market rates. The fluctuation in the market rates is beyond the control of the bank.'[188] However, when banks impose 'prevailing lending rates,' such imposition is considered one-sided, arbitrary and potestative as the bank is 'still the one who determines its own prevailing rate.'[189]

Vasquez further explain that:

At this juncture, the Court clarifies that there may be instances wherein an interest rate scheme which does not specifically indicate a particular interest rate may be validly imposed. Such interest rate scheme refers to what is typically called a **floating interest rate system**.

In *Security Bank Corp. v. Spouses Mercado*, the Court explained that floating rates of interest refer to the variable interest stated on a market-based reference rate agreed upon by the parties. Stipulations on floating rate of interest differ from escalation clauses. Escalation clauses are stipulations which allow for the increase of the original fixed interest rate. In contrast, a floating rate of interest pertains to the interest rate itself that is not fixed as it is dependent on a market-based reference that was agreed upon by the parties.[190]

In the aforesaid case, citing the Manual of Regulations of Banks (MORB) of the *Bangko Sentral ng Pilipinas* (BSP), the Court explained that the BSP allows banks and borrowers to agree on a floating rate of interest, provided that **it must be based on market-based reference rates**:

> § X305.3 ***Floating rates of interest.*** **– The rate of interest on a floating rate loan during each interest period shall be stated on the basis of Manila Reference Rates (MRRs), T-Bill Rates or other market based reference rates plus a margin as may be agreed upon by the parties.**[191]

The Court explained that "'[t]his BSP requirement is consistent with the principle that the determination of interest rates cannot be left solely to the will of one party. **It further emphasized that the reference rate must be stated in writing, and must be agreed upon by the parties.**'[192] Hence, in order for the concept of a floating rate of interest to apply, it presupposes that a market-based reference rate is indicated in writing and agreed upon by the parties. In the aforesaid case, the Court did not deem the interest rate imposed therein as an imposable floating rate of interest because the 'reference rates are not contained in writing as required by law and the BSP.'[193]

To stress, it should be noted that the DSAs of Nova and Goldwell, (which had similar provisions), stated that:

> d. [i]n addition to the above principal payment, debtor-mortgagor and sureties shall pay interest at 10% [per *annum*] for the first year repriceable every

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[188] Id.
[189] Id.
[190] Id.
[191] Id., citing Manual of Regulations for Banks, Vol. I; emphasis and underscoring supplied.
[192] Id., citing *Security Bank Corp. v. Spouses Mercado*, supra note 176.
[193] Id.

> quarter thereafter based on the prevailing market rate plus 10% [VAT], which shall be paid in arrears to Metrobank starting October 31, 2003 and every end of the quarter thereafter without need of demand. (Emphasis Ours)

In this case, it is understood that the monetary interest rate would be repriced quarterly (after the first year) based on the prevailing market rate. It is important to note that the provision did not state which market-based reference would be used by the parties for the repricing. The provision also did not indicate that the petitioners would be given a **written notice** as regards the application of the repriced interest rate and the **opportunity to consent to the repricing**, notwithstanding its dependency on the prevailing market rate at the time.[194] As earlier mentioned, even if the interest rates would be market-based, the reference rate should still be "**stated in writing and must be agreed upon by the parties.**"[195]

Based on the DSAs, Metrobank had the authority to unilaterally apply the "prevailing market rate" **without** specifying the market-based reference and securing the written assent of the petitioners, which is in violation of the principle of mutuality of contracts.[196] For this reason, the repriced monetary interest of 14.25% per *annum* should be declared as **void**. Indeed, the imposition of the monetary interest rate should not be left solely to the will and control of Metrobank absent the petitioners' express and written agreement.

Also, the Court finds the addition of the phrase "plus 10% [VAT]" on top of the repriced monetary interest as unnecessary and misleading, if not illegal. If the intent of Metrobank was to include the VAT in the breakdown of costs for purposes of computation in relation to its obligation to pay a tax,[197] it should not have placed the said phrase in the same provision as that pertaining to monetary interest. By doing so, Metrobank caused confusion. Worse, it actually included the VAT in the computation for petitioners' liabilities. It unduly imposed an additional obligation upon the petitioners, which should be struck down as iniquitous and unlawful, since the borrower should not bear the burden of paying taxes in behalf of the bank. Thus, the debtor companies should not be required to pay the 10% VAT. Accordingly, such part of the provision should also be struck down for being **invalid**. Additionally, the 10% VAT was imposed even before the execution of the DSAs, based on the breakdown indicated in the said documents. Such should not be allowed as Metrobank had no legal basis to do so in spite of the petitioners' presumed assent to pay the said tax.

With regard to the penal/compensatory interest, it is characterized as "an undertaking attached to a principal obligation"[198] and has two purposes: "*firstly*,

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[194] *Security Bank Corp. v. Spouses Mercado*, supra note 176.
[195] *Vasquez v. Philippine National Bank*, supra note 170 citing *Security Bank Corp. v. Spouses Mercado*, supra, note 176.
[196] Id., citing Desiderio P. Jurado, COMMENTS AND JURISPRUDENCE ON OBLIGATIONS AND CONTRACTS, 9th ed., 1987, pp. 351-352.
[197] *See:* NATIONAL INTERNAL REVENUE CODE, § 121. Bank services are subject to percentage tax on gross receipts.
[198] *Buenaventura v. Metropolitan Bank and Trust Co.*, supra note 171 at 260.

to provide for liquidated damages; and, *secondly*, to strengthen the coercive force of the obligation by the threat of greater responsibility in the event of breach of obligation."[199] Moreover, "a penal clause is a substitute indemnity for damages and the payment of interests in case of noncompliance, *unless there is a stipulation to the contrary*,"[200] pursuant to Article 1226[201] of the Civil Code. If the parties stipulate that there is a penalty interest separate from monetary interest, these two kinds of interest should be treated different and distinct from each other and may be demanded separately.[202] A penalty interest is sanctioned by Article 2229 of the Civil Code which states:

> If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six per cent per annum.

There is no dispute that the parties specified that upon default, the petitioners would have to pay compensatory interest. Nonetheless, considering the nullification of the repriced monetary interest and given that the Court is allowed to temper unconscionable interest rates, the penalty interest rate of 18% per *annum* stipulated in the DSAs should likewise be reduced to 6%[203] in line with recent jurisprudence.

The petitioners are still liable for the payment of the loans.

It is clear from the DSAs that the debtor companies agreed to pay interests on their loan obligations. After all, that is the principle behind the grant of loans. Notwithstanding the unconscionable and therefore void nature of the repriced interest rates, the petitioners still have to pay Metrobank the remaining amount of the loan obligations. They are not entitled to stop payment of interests, as only the **rates** of the interests were declared void. Thus, the "stipulation requiring [petitioners] to pay interest on their loan remains valid and binding."[204] Otherwise stated, Metrobank's imposition of unfair monetary and penalty interest rates would not preclude the bank from claiming full payment of the loans under the DSAs with *reasonable interests*.

In fine, "in a situation wherein the interest rate scheme imposed by the

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[199] Id., citing IV Tolentino, *Civil Code of the Philippines*, 1991, p. 259.
[200] Id., citing CIVIL CODE, Art. 1226.
[201] CIVIL CODE, Art. 1226.
Article 1226. In obligations with a penal clause, the penalty shall substitute the indemnity for damages and the payment of interest in case of noncompliance, if there is no stipulation to the contrary. Nevertheless, damages shall be paid if the obligor refuses to pay the penalty or is guilty of fraud in the fulfillment of the obligation. The penalty may be enforced only when it is demandable in accordance with the provisions of this Code.
[202] *Buenaventura v. Metropolitan Bank and Trust Co.*, supra, note 171 at 260 citing *Tan v. Court of Appeals*, 419 Phil. 857-871 (2001).
[203] *Security Bank Corp. v. Spouses Mercado*, supra, note 176 citing *MCMP Construction Corp. v. Monark Equipment Corp.*, G.R. No. 201001, November 10, 2014.
[204] *Spouses Andal v. Philippine National Bank*, 722 Phil. 273, 283-284 (2013).

bank was struck down because the bank was allowed under the loan agreement to unilaterally determine and increase the imposable interest rate, thus being null and void, '**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.**'"[205] Relevantly, "**the Court shall apply the applicable legal rate of interest, which refers to 'the prevailing rate at the time when the agreement was entered into.'**"[206] On the DSAs, however, the monetary interest for the first year should be at the rate of 10% per *annum*, repriceable every quarter based on the prevailing market rate. Since We already pronounced such unilateral quarterly repricing as void, the applicable legal rate should be utilized for the subsequent years (after the first year with 10% per *annum* interest according to the DSAs). Simply put, the monetary interest rates should be as follows: 10% per *annum* from August 15, 2003 (date of execution of the DSAs) until August 15, 2004 (the first year); 12% per *annum* from August 16, 2004 until June 30, 2013; and then 6% per *annum* from July 1, 2013 until full payment.[207] These rates should be deemed reasonable under the circumstances and based on jurisprudence.

To stress, Nova and Goldwell executed separate DSAs. In their respective DSAs, they agreed to execute two PNs to cover for two categories: (a) recomputed outstanding past due interest (which would be subject to a 10% per *annum* interest on the first year and then the legal interest rate thereafter based on the previous discussion); and (b) new principal obligation after taking into account the recomputed outstanding past due interest and the 75% waiver granted by Metrobank on the outstanding penalty charges, as well as other deductions given by the bank. Thus, according to the DSAs, assuming that the imposition of the 10% VAT was not included in the figures provided, the specific rates that Nova and Goldwell should pay are:

	First Promissory Note (PN1)[208]	**Second Promissory Note (PN2)[209]**	**Conditions (Monetary Interest on both PNs)**	**TOTAL**
Nova	₱3,014,220.09	₱12,878,966.66	a) 10% per *annum* on the first year (August 15, 2003 to August 15, 2004); b) 12% per *annum* from August 16, 2004 to June	(PN1 + PN2) = ₱15,893,186.75

[205] *Vasquez v. Philippine National Bank*, supra, note 170 citing *Spouses Limso v. Philippine National Bank*, 779 Phil. 287, 370 (2016).
[206] Id.
[207] *Nacar v. Gallery Frames*, 716 Phil. 267-283 (2013).
[208] *Rollo*, p. 300; Item Number 2 after the "Now Therefore" clause.
[209] Id. at 305; Item Number 2 after the "Now Therefore" clause.

			30, 2013; c) 6% per *annum* from July 1, 2013 until fully paid	
Goldwell	₱9,305,079.17	₱37,249,226.41	a) 10% per *annum* on the first year (August 15, 2003 to August 15, 2004); b) 12% per *annum* from August 16, 2004 to June 30, 2013; c) 6% per *annum* from July 1, 2013 until fully paid	(PN1 + PN2) = ₱46,554,305.58
				Sum of Nova and Goldwell PNs = **₱62,447,492.33**

Nonetheless, it should be emphasized that the total figure of **₱62,447,492.33** was presented for the purpose of illustrating how much, when combined, the petitioners owe Metrobank. It does not mean that the PNs of Nova and Goldwell should be consolidated or that the collaterals of both companies should cover for the petitioners' obligations without distinction.

In any case, the petitioners cannot be deemed to have defaulted from their obligation. It would be unjust to require a penalty charge upon them prior to the finality of this Decision, since the monetary interest rate scheme previously imposed by Metrobank on the DSAs was null and void. From the time the petitioners filed their Complaint[210] until they filed the instant petition, they averred that they failed to timely tender payments due to Metrobank's imposition of exorbitant interest rates, which caused difficulty and delay on their part. Thence, the debtor companies "cannot be considered in default as [Metrobank] had no right to demand and [the petitioners] had no obligation to pay illegal monetary interest."[211] Simply put, the petitioners can be "considered in default only upon failure to pay the obligation here stated upon finality of this Decision."[212] In the event that the petitioners default in their payment upon finality of this Decision, the penalty interest rate of 6% per *annum* shall be applied to the principal loan obligation (based on the individual PNs) including monetary interest, until full payment.[213] Relevantly, since there is strictly no

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[210] *Rollo*, pp. 88-89.
[211] *Vasquez v. Philippine National Bank*, supra, note 170.
[212] Id., citing *Spouses Andal v. Philippine National Bank*, supra, note 204.
[213] *Spouses Andal v. Philippine National Bank*, supra note 204; *Nacar v. Gallery Frames*, supra, note 207.

default yet, Metrobank cannot institute foreclosure proceedings based on the real estate mortgage contracts.[214] Withal, if Metrobank conducted foreclosure proceedings on any of the mortgages, such should be immediately invalidated.

Moreover, it should be noted that the petitioners managed to pay some amounts until August 2004. Yet, Metrobank argued that the petitioners only made payments for interest amortizations, VAT, and/or penalty charges, and not the principal obligation as reflected in some of the receipts[215] on record. Regardless, these prior remittances should be counted as payments for the applicable *valid* interests on the loans (prior to and after the execution of the DSAs), given that the repriced monetary interest rate, the imposition of VAT, and the stipulated penalty interest rate have been declared void, and because the petitioners cannot be considered to be in default yet.[216]

In sum, the petitioners, based on the figures on the DSAs, are obligated to pay the following:

For Nova, *without* further imposition of the 10% VAT, whether prior to or after the execution of the DSAs –

1) ₱3,014,220.09 under PN1, with compensatory interest rate at: a) 10% per *annum* on the first year (August 15, 2003 to August 15, 2004); b) 12% per *annum* from August 16, 2004 to June 30, 2013; and c) 6% per *annum* from July 1, 2013 until fully paid.

2) ₱12,878,966.66 under PN2, with compensatory interest rate at: a) 10% per *annum* on the first year (August 15, 2003 to August 15, 2004); b) 12% per *annum* from August 16, 2004 to June 30, 2013; and c) 6% per *annum* from July 1, 2013 until fully paid.

For Goldwell, *without* further imposition of the 10% VAT, whether prior to or after the execution of the DSAs –

1) ₱9,305,079.17 under PN1, with compensatory interest rate at: a) 10% per *annum* on the first year (August 15, 2003 to August 15, 2004); b) 12% per *annum* from August 16, 2004 to June 30, 2013; and c) 6% per *annum* from July 1, 2013 until fully paid.

2) ₱37,249,226.41 under PN2, with compensatory interest rate at: a) 10% per *annum* on the first year (August 15, 2003 to August 15, 2004); b) 12% per *annum* from August 16, 2004 to June 30, 2013; and c) 6% per *annum* from July 1, 2013 until fully paid.

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[214] *Vasquez v. Philippine National Bank*, supra note 170 citing *Spouses Andal v. Philippine National Bank*, supra, note 204.

[215] *Rollo*, pp. 456-458, 460-462, 464-469.

[216] *See*: *Spouses Silos v. Philippine National Bank*, supra note 164 citing *Hodges v. Salas*, 63 Phil. 567, 574 (1936); other citations omitted.

Furthermore, the petitioners should pay compensatory interest at the rate of 6% per *annum* upon their failure to fulfill the obligation under the DSAs discussed herein upon finality of this Decision until fully paid. Thereafter, all the monetary obligations shall earn legal interest at the prevailing rate of 6% per *annum* from the date of finality of this Decision until full satisfaction, with "the interim period being deemed to be an equivalent to a forbearance of credit"[217] or "judicial debt."[218]

The parties are not entitled to damages and attorney's fees.

Since the parties did not substantiate their entitlement to damages, the Court affirms the denial of their claims by the RTC and the CA. Notably, however, the promissory notes contained a provision addressing attorney's fees. Although the promissory notes indicated that Metrobank would be entitled to collect 10% of the amount due as attorney's fees, the same cannot be granted since the bank did not present this as an issue during the trial. In the same way, it did not raise such as an issue throughout the appellate level and even before the Court.

Final Word.

In granting loans, banks always attempt to impose as many interests that they can, sometimes worded differently to confuse debtors. Unfortunately, borrowers are, in most cases, forced to accept unfair interest rates and conditions due to dire need. Ergo, the Court has the duty to ensure that banks do not unduly take advantage of their position of wealth and opportunity. Certainly, while the business of banks is geared toward profit-earning, it should always be subject to standards of reasonableness and fairness.

WHEREFORE, the instant petition is **PARTIALLY GRANTED**. The assailed Decision dated January 31, 2013 and Resolution dated November 7, 2013 rendered by the Court of Appeals in CA-G.R. CV No. 92874 are hereby **AFFIRMED with MODIFICATIONS** in that petitioners Goldwell Properties Tagaytay, Inc., Nova Northstar Realty Corporation and NS Nova Star Company, Inc. are **ORDERED** to pay respondent Metropolitan Bank and Trust Company the following:

For Nova Northstar Realty Corporation, *without* further imposition of the 10% Value Added Tax, whether prior to or after the execution of the DSAs:

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[217] *Buenaventura v. Metropolitan Bank and Trust Co.*, supra, note 171 citing *Planters Development Bank v. Lopez*, 720 Phil. 426-450 (2013); *Panacan Lumber Co. v. Solidbank Corp.*, supra, note 181 citing *Nacar v. Gallery Frames*, supra note 207.

[218] *Metropolitan Bank & Trust Co. v. Chuy Lu Tan*, supra note 175 citing *Nacar v. Gallery Frames*, supra note 207.

1) ₱3,014,220.09 under Promissory Note 1, with compensatory interest rate at: a) 10% per *annum* on the first year (August 15, 2003 to August 15, 2004); b) 12% per *annum* from August 16, 2004 to June 30, 2013; and c) 6% per *annum* from July 1, 2013 until fully paid.

2) ₱12,878,966.66 under Promissory Note 2, with compensatory interest rate at a) 10% per *annum* on the first year (August 15, 2003 to August 15, 2004); b) 12% per *annum* from August 16, 2004 to June 30, 2013; and c) 6% per *annum* from July 1, 2013 until fully paid.

For Goldwell Properties Tagaytay, Inc., Nova Northstar Realty Corporation, and Nova Northstar Service Apartment Hotel Co., Inc., *without* further imposition of the 10% VAT, whether prior to or after the execution of the DSAs:

1) ₱9,305,079.17 under Promissory Note 1, with compensatory interest rate at: a) 10% per *annum* on the first year (August 15, 2003 to August 15, 2004); b) 12% per *annum* from August 16, 2004 to June 30, 2013; and c) 6% per *annum* from July 1, 2013 until fully paid.

2) ₱37,249,226.41 under Promissory Note 2, with compensatory interest rate at: a) 10% per *annum* on the first year (August 15, 2003 to August 15, 2004); b) 12% per *annum* from August 16, 2004 to June 30, 2013; and c) 6% per *annum* from July 1, 2013 until fully paid.

In case of default upon finality of this Decision, the petitioners should pay compensatory interest at the rate of six percent (6%) per *annum* on the total amount due on the individual Promissory Notes, plus monetary interests, until fully paid. Also, the petitioners have an obligation to settle the six percent (6%) per *annum* legal interest on the total monetary award, *i.e.*, total amount on the individual Promissory Notes, monetary interest, and compensatory interest (if any) from finality of this Decision until full satisfaction.

In the alternative, if the petitioners default in their payments, Metrobank may secure payment of the amounts on the individual Promissory Notes, including the applicable interests and penalty charges, by instituting an action for the foreclosure of the mortgages and then to seek payment of the remainder from the petitioners if the amount secured from the foreclosure proceedings will be deemed insufficient.

The amounts previously tendered by the petitioners should be counted as payments for the applicable interests and/or penalties as they are considered to have not yet defaulted when they remitted the same.

SO ORDERED.

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:

MARVIC M. V. F. LEONEN
Associate Justice
Chairperson

HENRI JEAN PAUL B. INTING
Associate Justice

EDGARDO L. DELOS SANTOS
Associate Justice

JHOSEP Y. LOPEZ
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.

MARVIC M. V. F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

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

ALEXANDER G. GESMUNDO
Chief Justice