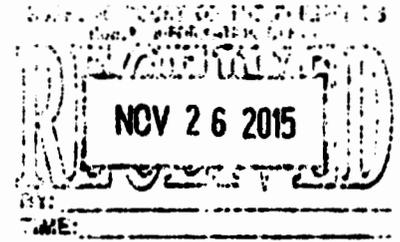




Republic of the Philippines  
**Supreme Court**  
**Manila**

FIRST DIVISION



**MAYBANK PHILIPPINES,  
 INC. (Formerly PNB-Republic  
 Bank<sup>1</sup>),**

Petitioner,

- versus -

**G.R. No. 213014**

Present:

SERENO, *CJ.*, Chairperson,  
 LEONARDO-DE CASTRO,  
 BERSAMIN,  
 PEREZ, and  
 PERLAS-BERNABE, *JJ.*

**SPOUSES OSCAR and  
 NENITA TARROSA,**  
 Respondents.

Promulgated:

**OCT 14 2015**

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**DECISION**

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>2</sup> are the Decision<sup>3</sup> dated November 29, 2013 and the Resolution<sup>4</sup> dated May 13, 2014 of the Court of Appeals (CA) in CA-G.R. CV No. 02211, which affirmed the Decision<sup>5</sup> dated June 16, 2005 of the Regional Trial Court of Bacolod City, Branch 41 (RTC) in Civil Case No. 98-10451 declaring the extrajudicial foreclosure sale of the property covered by Transfer Certificate of Title (TCT) No. T-5649 as null and void for being barred by prescription.

<sup>1</sup> "PNB-Republic Planters Bank" in some parts of the records.

<sup>2</sup> *Rollo*, pp. 10-29.

<sup>3</sup> *Id.* at 32-40. Penned by Associate Justice Edgardo L. Delos Santos with Associate Justices Pamela Ann Abella Maxino and Maria Elisa Sempio Diy concurring.

<sup>4</sup> *Id.* at 41-42. Penned by Associate Justice Edgardo L. Delos Santos with Associate Justices Ramon Paul L. Hernando and Pamela Ann Abella Maxino concurring.

<sup>5</sup> *Records*, pp. 390-413. Penned by Judge Ray Alan T. Drilon.

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## The Facts

On December 15, 1980, respondents-spouses Oscar and Nenita Tarrosa (Sps. Tarrosa) obtained from then PNB-Republic Bank, now petitioner Maybank Philippines, Inc. (Maybank), a loan in the amount of ₱91,000.00. The loan was secured by a Real Estate Mortgage<sup>6</sup> dated January 5, 1981 (real estate mortgage) over a 500-square meter parcel of land situated in San Carlos City, Negros Occidental (subject property), covered by TCT No. T-5649,<sup>7</sup> and the improvements thereon.<sup>8</sup>

After paying the said loan, or sometime in March 1983, Sps. Tarrosa obtained another loan from Maybank in the amount of ₱60,000.00 (second loan),<sup>9</sup> payable on March 11, 1984.<sup>10</sup> However, Sps. Tarrosa failed to settle the second loan upon maturity.<sup>11</sup>

Sometime in April 1998, Sps. Tarrosa received a Final Demand Letter<sup>12</sup> dated March 4, 1998 (final demand letter) from Maybank requiring them to settle their outstanding loan in the aggregate amount of ₱564,579.91, inclusive of principal, interests, and penalty charges.<sup>13</sup> They offered to pay a lesser amount, which Maybank refused.<sup>14</sup> Thereafter, or on June 25, 1998, Maybank commenced extrajudicial foreclosure proceedings<sup>15</sup> before the office of Ex-Officio Provincial Sheriff Ildelfonso Villanueva, Jr. (Sheriff Villanueva). The subject property was eventually sold in a public auction sale held on July 29, 1998<sup>16</sup> for a total bid price of ₱600,000.00, to the highest bidder, Philmay Property, Inc. (PPI), which was thereafter issued a Certificate of Sale<sup>17</sup> dated July 30, 1998.<sup>18</sup>

On September 7, 1998, Sps. Tarrosa filed a complaint<sup>19</sup> for declaration of nullity and invalidity of the foreclosure of real estate and of public auction sale proceedings and damages with prayer for preliminary injunction against Maybank, PPI, Sheriff Villanueva, and the Registry of Deeds of San Carlos City, Negros Occidental (RD-San Carlos), before the RTC, docketed as Civil Case No. 98-10451. They averred, *inter alia*, that: (a) the second loan was a clean or unsecured loan; (b) after receiving the final demand letter, they tried to pay the second loan, including the agreed interests and charges, but

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<sup>6</sup> Id. at 180-183.

<sup>7</sup> Id. at 178-179.

<sup>8</sup> See id. at 4, 183, and 391.

<sup>9</sup> See id. at 391 and 395.

<sup>10</sup> See id. at 407-408.

<sup>11</sup> See id. at 396-397. See also *rollo*, p. 33.

<sup>12</sup> Records, p. 199.

<sup>13</sup> *Rollo*, p. 34.

<sup>14</sup> Records, p. 29.

<sup>15</sup> See Application for Foreclosure of Real Estate Mortgage under R.A. 3135, as Amended; id. at 184-186.

<sup>16</sup> See Notice of Extra Judicial Sale dated July 1, 1998; id. at 187.

<sup>17</sup> Id. at 188-189.

<sup>18</sup> See *rollo*, p. 34.

<sup>19</sup> Dated September 1, 1998; records, pp. 2-11.

Maybank unjustly refused their offers of payment; and (c) Maybank's right to foreclose had prescribed or is barred by laches.<sup>20</sup>

On the other hand, Maybank and PPI countered<sup>21</sup> that: (a) the second loan was secured by the same real estate mortgage under a continuing security provision therein; (b) when the loan became past due, Sps. Tarrosa promised to pay and negotiated for a restructuring of their loan, but failed to pay despite demands; and (c) Sps. Tarrosa's positive acknowledgment and admission of their indebtedness controverts the defense of prescription.<sup>22</sup>

### The RTC Ruling

In a Decision<sup>23</sup> dated June 16, 2005, the RTC held that the second loan was subject to the continuing security provision in the real estate mortgage.<sup>24</sup> However, it ruled that Maybank's right to foreclose, reckoned from the time the mortgage indebtedness became due and payable on March 11, 1984, had already prescribed, considering the lack of any timely judicial action, written extrajudicial demand or written acknowledgment by the debtor of his debt that could interrupt the prescriptive period.<sup>25</sup> Accordingly, it declared the extrajudicial foreclosure proceedings affecting the subject property as null and void, and ordered Maybank to pay Sps. Tarrosa moral and exemplary damages, as well as attorney's fees and litigation expenses.<sup>26</sup>

Maybank filed a motion for reconsideration<sup>27</sup> which was, however, denied in an Order<sup>28</sup> dated December 9, 2005, prompting it to appeal<sup>29</sup> to the CA.

### The CA Ruling

In a Decision<sup>30</sup> dated November 29, 2013, the CA affirmed the RTC ruling that Maybank's right to foreclose the real estate mortgage over the subject property is already barred by prescription. It held that the

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<sup>20</sup> See *id.* at 4-7.

<sup>21</sup> See Answer dated January 21, 1999; *id.* at 28-34.

<sup>22</sup> See *id.* at 28-30 and 180. The real estate mortgage specifically provided that the same is being executed:

[F]or and in consideration of certain loans, overdrafts and other credit accommodations obtained from [REPUBLIC PLANTERS BANK], and to secure the payment of the same and those that may hereafter be obtained x x x as well as those [REPUBLIC PLANTERS BANK] may extend to [Sps. Tarrosa], including interest and expenses or any other obligation owing to [REPUBLIC PLANTERS BANK] x x x.

<sup>23</sup> *Id.* at 390-413.

<sup>24</sup> See *id.* at 405.

<sup>25</sup> See *id.* at 407-408.

<sup>26</sup> See *id.* at 412-413.

<sup>27</sup> Dated July 15, 2005. *Id.* at 414-425.

<sup>28</sup> *Id.* at 479-486.

<sup>29</sup> See Notice of Appeal dated December 13, 2005; *id.* at 493-494.

<sup>30</sup> *Rollo*, pp. 32-40.

prescriptive period should be reckoned from March 11, 1984 when the second loan had become past due and remained unpaid since demand was not a condition *sine qua non* for the accrual of the latter's right to foreclose under paragraph 5 of the real estate mortgage. It observed that Maybank failed to present evidence of any timely written extrajudicial demand or written acknowledgment by the debtors of their debt that could have effectively interrupted the running of the prescriptive period.<sup>31</sup>

Undaunted, Maybank moved for reconsideration,<sup>32</sup> which was denied in a Resolution<sup>33</sup> dated May 13, 2014; hence this petition.

### The Issues Before the Court

The essential issue for the Court's resolution is whether or not the CA committed reversible error in finding that Maybank's right to foreclose the real estate mortgage over the subject property was barred by prescription.

### The Court's Ruling

The petition is meritorious.

**An action to enforce a right arising from a mortgage should be enforced within ten (10) years from the time the right of action accrues, i.e., when the mortgagor defaults in the payment of his obligation to the mortgagee; otherwise, it will be barred by prescription and the mortgagee will lose his rights under the mortgage.**<sup>34</sup> However, mere delinquency in payment does not necessarily mean delay in the legal concept. To be in default is different from mere delay in the grammatical sense, because it involves the beginning of a special condition or status which has its own peculiar effects or results.<sup>35</sup>

In order that the debtor may be in default, it is necessary that: (a) the obligation be demandable and already liquidated; (b) the debtor delays performance; and (c) the creditor requires the performance judicially or extrajudicially,<sup>36</sup> unless demand is not necessary – i.e., when there is an express stipulation to that effect; where the law so provides; when the period is the controlling motive or the principal inducement for the creation of the obligation; and where demand would be useless. Moreover, it is not sufficient that the law or obligation fixes a date for performance; it must

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<sup>31</sup> See *id.* at 36-39.

<sup>32</sup> See motion for reconsideration dated January 16, 2014; *CA rollo*, pp. 160-168.

<sup>33</sup> *Rollo*, pp. 41-42.

<sup>34</sup> *Cando v. Sps. Olazo*, 547 Phil. 630, 637 (2007).

<sup>35</sup> See *Social Security System v. Moonwalk Development and Housing Corporation*, G.R. No. 73345, April 7, 1993, 221 SCRA 119, 128; citation omitted.

<sup>36</sup> *Cruz v. Gruspe*, G.R. No. 191431, March 13, 2013, 693 SCRA 415, 421-422.

further state expressly that after the period lapses, default will commence.<sup>37</sup> Thus, **it is only when demand to pay is unnecessary in case of the aforementioned circumstances, or when required, such demand is made and subsequently refused that the mortgagor can be considered in default and the mortgagee obtains the right to file an action to collect the debt or foreclose the mortgage.**<sup>38</sup>

In the present case, both the CA and the RTC reckoned the accrual of Maybank's cause of action to foreclose the real estate mortgage over the subject property from the maturity of the second loan on May 11, 1984. The CA further held that demand was unnecessary for the accrual of the cause of action in light of paragraph 5 of the real estate mortgage, which pertinently provides:

5. In the event that the Mortgagor herein should fail or refuse to pay any of the sums of money secured by this mortgage, or any part thereof, in accordance with the terms and conditions herein set forth, or should he/it fail to perform any of the conditions stipulated herein, then and in any such case, the Mortgagee shall have the right, at its election to foreclose this mortgage, [x x x].<sup>39</sup>

However, this provision merely articulated Maybank's right to elect foreclosure upon Sps. Tarrosa's failure or refusal to comply with the obligation secured, which is one of the rights duly accorded to mortgagees in a similar situation.<sup>40</sup> In no way did it affect the general parameters of default, particularly the need of prior demand under Article 1169<sup>41</sup> of the Civil Code,

<sup>37</sup> See *Rivera v. Sps. Chua*, G.R. Nos. 184458 and 184472, January 14, 2015. See also Article 1169 of the Civil Code.

<sup>38</sup> *DBP v. Licuanan*, 545 Phil. 544, 554 (2007).

<sup>39</sup> *Rollo*, p. 39.

<sup>40</sup> In *Caltex Philippines, Inc. v. Intermediate Appellate Court*, 257 Phil. 753, 764 (1989), it was held:

[W]here a debt is secured by a mortgage and there is a default in payment on the part of the mortgagor, the mortgagee has a choice of one (1) of two (2) remedies, but he cannot have both. The mortgagee may:

- 1) foreclose the mortgage; or
- 2) file an ordinary action to collect the debt.

When the mortgagee chooses the foreclosure of the mortgage as a remedy, he enforces his lien by the sale on foreclosure of the mortgaged property. The proceeds of the sale will be applied to the satisfaction of the debt. With this remedy, he has a prior lien on the property. In case of a deficiency, the mortgagee has the right to claim for the deficiency resulting from the price obtained in the sale of the real property at public auction and the outstanding obligation at the time of the foreclosure proceedings x x x.

<sup>41</sup> Article 1169 of the Civil Code reads:

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

However, the demand by the creditor shall not be necessary in order that delay may exist:

- (1) When the obligation or the law expressly so declare; or

considering that it did not expressly declare: (a) that demand shall not be necessary in order that the mortgagor may be in default; or (b) that default shall commence upon mere failure to pay on the maturity date of the loan. Hence, the CA erred in construing the above provision as one through which the parties had dispensed with demand as a condition *sine qua non* for the accrual of Maybank's right to foreclose the real estate mortgage over the subject property, and thereby, mistakenly reckoned such right from the maturity date of the loan on March 11, 1984. In the absence of showing that demand is unnecessary for the loan obligation to become due and demandable, Maybank's right to foreclose the real estate mortgage accrued only after the lapse of the period indicated in its final demand letter for Sps. Tarrosa to pay, *i.e.*, after the lapse of five (5) days from receipt of the final demand letter dated March 4, 1998.<sup>42</sup> Consequently, both the CA and the RTC committed reversible error in declaring that Maybank's right to foreclose the real estate mortgage had already prescribed.

Thus, considering that the existence of the loan had been admitted, the default on the part of the debtors-mortgagors had been duly established, and the foreclosure proceedings had been initiated within the prescriptive period as afore-discussed, the Court finds no reason to nullify the extrajudicial foreclosure sale of the subject property.

**WHEREFORE**, the petition is **GRANTED**. The Decision dated November 29, 2013 and the Resolution dated May 13, 2014 of the Court of Appeals in CA-G.R. CV No. 02211 are hereby **REVERSED AND SET ASIDE**. The complaint in Civil Case No. 98-10451 is **DISMISSED**.

**SO ORDERED.**

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

**WE CONCUR:**

  
**MARIA LOURDES P. A. SERENO**  
 Chief Justice  
 Chairperson

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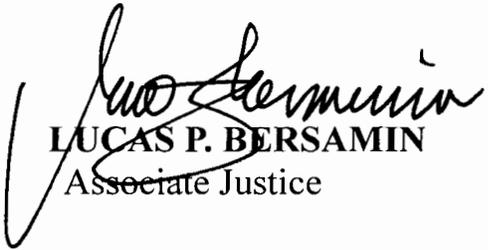
(2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or

(3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins.

<sup>42</sup> Records, p. 199.

  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

**CERTIFICATION**

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

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice