Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ASSET POOL A (SPV-AMC), INC., *Petitioner,*	**G.R. No. 203194**
	Present:
- *versus* -	LEONEN, *Chairperson,* HERNANDO, INTING, DELOS SANTOS, and LOPEZ, J. Y., *JJ.*
SPOUSES BUENAFRIDO and FELISA BERRIS, *Respondents.*	Promulgated: April 26, 2021

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DECISION

HERNANDO, *J.*:

Challenged in this Petition for Review on *Certiorari*[1] is the March 23, 2012 Decision[2] and August 16, 2012 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 92498 which reversed and set aside the August 29, 2008 Decision[4] of the Regional Trial Court (RTC), Branch 136 of Makati City in Civil Case No. 99-1572 ordering the respondents, spouses Buenafrido and Felisa Berris (collectively, spouses Berris), to jointly and severally pay petitioner Asset Pool A (SPV-AMC), Inc. (Asset Pool) the amount of ₱17,422,072.51 plus interests, liquidated damages, attorney's fees and litigation, other incidental expenses and costs of suit.

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1 *Rollo*, pp. 9-33.
2 CA *rollo*, at 135-152; penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Mariflor P. Punzalan-Castillo and Myra G. Fernandez.
3 *Id.* at 176-181.
4 Records, pp. 441-449; penned by Judge Rebecca R. Mariano.

The appellate court held that the prior institution of the foreclosure proceedings by Far East Bank and Trust Company (FEBTC), petitioner's predecessor-in-interest, effectively barred the subsequent filing of the collection suit in the RTC in view of the prohibition on splitting a single cause of action.

The Antecedents:

On November 15, 1995, FEBTC and B. Berris Merchandising (BBM), a sole proprietorship owned by Buenafrido, entered into a Loan Agreement[5] for the total amount of ₱5,000,000.00 with interest at prevailing market rates payable within a period of five years inclusive of a six-month grace period *via* 18 quarterly amortizations on the principal balance and based on diminishing principal balance and payable every quarter in arrears. To secure the loan, the spouses Berris executed a real estate mortgage on parcels of land covered by Transfer Certificates of Title (TCT) Nos. 129163 and 74496,[6] a chattel mortgage[7] on their rice mill, and a Comprehensive Surety Agreement.[8]

FEBTC also granted BBM a Discounting Line facility in the total amount of ₱15,000,000.00 with expiry on July 31, 1997.[9] On July 3, 1997, the discounting line was renewed for the same amount, valid until July 31, 1998.[10] On February 16, 1998, the parties increased the discounting facility to ₱18,000,000.00 with the same expiry on July 31, 1998.[11] It also provided that the discounting accommodation shall be partially secured by a real estate mortgage on TCT Nos. 129163, 74496, 27852, 31079 and 296868[12] and the chattel mortgage on the rice mill.[13]

Meanwhile, on April 15, 1996, the spouses Berris, for and in behalf of BBM, executed Promissory Note (PN) No. 2-104-961106/TLS[14] in the total amount of ₱5,000,000.00 due on April 16, 2001 with an interest of 14.5% per *annum* and carrying the same provisions as the Term Loan Agreement, *i.e.* payable within a period of five years inclusive of six-month grace period *via* 18 quarterly amortizations on the principal balance and based on diminishing principal balance and payable every quarter in arrears.

Thereafter, the spouses Berris, for and in behalf of BBM, executed the following PNs:

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5 Id. at 390-396.
6 Id. at 390.
7 Id.
8 Id.; see also pp. 388-389.
9 Id. at 399.
10 Id. at 399-400.
11 Id. at 397-398.
12 Id. at 397.
13 Id. at 399.
14 Id. at 384.

a) PN No. 2-104-980259/bdc dated January 23, 1998 in the total amount of ₱4,000,000.00 due on July 22, 1998 with an interest rate of 26% per *annum;*[15]

b) PN No. 2-104-980296/bdc dated January 27, 1998 in the total amount of ₱2,500,000.00 due on July 24, 1998 with an interest of 27% per *annum;*[16]

c) PN No. 2-104-980975 BD/C dated April 15, 1998 in the total amount of ₱3,000,000.00 due on July 31, 1998 with an interest of 22% per *annum;*[17] and

d) PN No. 2-104-981149/BDC dated May 13, 1998 in the total amount of ₱750,000.00 due on July 31, 1998 with an interest of 21.95% per *annum.*[18]

All PNs bore similar provisions which entitled FEBTC to 25% of the amount due by way of attorney's fees in case of default. In addition, the last four PNs, namely, PN Nos. 2-104-980259/bdc, 2-104-980296/bdc, 2-104-980975 BD/C and 2-104-981149/BDC, provided that FEBTC is entitled to liquidated damages of 1% for every 30 days or a fraction thereof on the amount due in case of default.

The spouses Berris failed to pay their obligations under the PNs. Hence, on August 5, 1998, FEBTC sent a letter[19] demanding payment of the total amount of ₱21,055,555.54 representing both their Discounting Line and Loan Agreement availments, exclusive of interest, penalties and other charges. The bank, on December 15, 1998, sent another letter[20] to the spouses Berris reiterating its demand for payment of the same amount exclusive of interest, penalties and other charges. On February 3, 1999, FEBTC, through counsel, sent a Final Demand Letter[21] to the spouses Berris demanding that they pay their obligations amounting ₱21,055,555.54 exclusive of interest, penalties and other charges, not later than February 19, 1999.

On August 19, 1999, the bank filed a Petition for Extra-Judicial Foreclosure of Real Estate Mortgage under Act No. 3135, as amended, before the RTC of Sta. Cruz, Laguna over the properties covered by TCT Nos. T-129163 and 74496 for the loans covered by PN Nos. 2-104-980258 BDC and 2-104-980888 BDC.[22]

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[15] Id. at 382.
[16] Id. at 380.
[17] Id. at 378.
[18] Id. at 386-387.
[19] Id. at 424.
[20] Id. at 425.
[21] Id. at 61-62.
[22] Id. at 188-191.

Thereafter, on August 30, 1999, FEBTC filed its complaint[23] for the collection of the amounts due on:

a) PN Nos. 2-104-961106/TLS;

b) PN 2-104-980259/bdc;

c) PN 2-104-980296/bdc;

d) PN 2-104-980975 BD/C; and

e) PN 2-104-981149/BDC

which was docketed as Civil Case No. 99-1572 before the RTC of Makati.

On October 23, 2000, the spouses Berris filed a Complaint for the Annulment of Sale with Prayer for Injunction and Restraining Order,[24] docketed as Civil Case No. 3016-2000-C with the RTC of Calamba, Laguna assailing the extra-judicial foreclosure of mortgage.

On April 7, 2000, the Securities and Exchange Commission (SEC) approved the merger of the Bank of Philippine Islands (BPI) and FEBTC with the former as the surviving corporation.[25]

On March 3, 2006, the spouses Berris filed a Motion for Additional Time to File Answer or Other Appropriate Pleadings[26] in Civil Case No. 99-1572 which was granted by the RTC Makati in its Order dated March 8, 2006.[27] On March 18, 2006, they filed another Second Motion for Time to File Answer or Other Appropriate Pleadings[28] in the collection suit which was again granted by the Makati trial court in its March 22, 2006 Order[29] giving them until April 2, 2006 within which to file an Answer and other appropriate pleadings.

On April 2, 2006, the spouses Berris filed a Motion to Dismiss[30] which was denied by the RTC Makati in its July 27, 2006 Order[31] for lack of merit. Their motion for reconsideration was also denied by the trial court in its December 4, 2006 Order.[32] Meanwhile, on May 12, 2006, BPI assigned the loans of BBM, including the collaterals, to petitioner Asset Pool.[33] The

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[23] Id. at 1-4.
[24] Id. at 192-201
[25] Id. at 363-377.
[26] Id. at 160-162.
[27] Id. at 167.
[28] Id. at 168-170.
[29] Id. at 175.
[30] Id. at 178-187.
[31] Id. at 207-209.
[32] Id. at 294-295.
[33] Id. at 401-403.

Makati RTC granted petitioner Asset Pool's motion for substitution of parties in order to continue the proceedings of the case in lieu of FEBTC.[34]

On December 20, 2006, the spouses Berris filed a Motion for Clarification of Time to Plead[35] as to the amendment of the complaint to effect the Asset Pool's substitution and further pray for a period of at least 15 days from the disposal of the instant motion within which to file their Answer. However, petitioner Asset Pool opposed the said motion and prayed that the spouses Berris be declared in default.[36]

On March 7, 2007, the trial court issued an Order[37] denying the spouses Berris' motions for clarification and extension of time to plead and granting petitioner Asset Pool's motion to declare the Berrises in default. Aggrieved, the spouses Berris filed a motion for reconsideration which was denied by the trial court of Makati in its May 14, 2008 Order.[38] Thereafter, trial on the merits ensued. Petitioner Asset Pool proceeded with the *ex-parte* presentation of its evidence.

Ruling of the Makati Regional Trial Court in Civil Case No. 99-1572:

On August 29, 2008, the trial court of Makati rendered its Decision[39] in favor of petitioner Asset Pool, the dispositive portion of which reads:

> WHEREFORE, in the light of the foregoing, judgment is hereby rendered in favor of plaintiff Asset Pool A (SPC-AMC), Inc. and against the defendant Spouses Buenafrido & Felisa Berris, ordering the latter to pay, jointly and severally the former, the following:
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> 1) [₱]17,422,072.51 plus the stipulated interests and other charges thereon to be computed from May 7, 1999 until the date the same is fully paid;
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> 2) The amount equivalent to 1% of the total amount due as liquidated damages;
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> 3) The amount equivalent to 25% of the total amount due as and for Attorney's fees;
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> 4) [₱]112,332.35 as litigation, other incidental expenses and costs of suit.
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> SO ORDERED.[40]

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34 Id. at 294-295.
35 Id. at 296-301.
36 Id. at 305-313.
37 Id. at 323-324.
38 Id. at 352.
39 Id. at 441-449.
40 Id. at 449.

The RTC Makati found that the spouses Berris indeed failed to pay their outstanding obligations under the PNs which constitute a contractual breach thereof.

Ruling of the Court of Appeals:

On appeal, the appellate court reversed and set aside the August 29, 2008 Decision of the trial court in its assailed Decision dated March 23, 2012, to wit:

> WHEREFORE, premises considered, the instant appeal is hereby GRANTED. The appealed Decision is hereby REVERSED and SET ASIDE and Civil Case No. 99-1572 of Branch 136 of the Regional Trial Court of Makati City, National Capital Judicial Region, is hereby DISMISSED.
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> SO ORDERED.[41]

The appellate court held that the institution of the extrajudicial foreclosure of mortgage of the subject properties to satisfy the loans under PN Nos. 2-104-980258/BDC and 2-104-980888/BDC barred the filing of the collection suit filed by petitioner under PN Nos. 2-1040961106/TLS, 2-104-980259/bdc, 2-104-980296/bdc, 2-104-980975 BD/C and 2-104-981149/BDC.[42] It ruled that the loans covered by the five PNs subject of the collection suit are single and indivisible and secured by the same mortgage. Thus, the filing of the collection suit is barred by the prior filing of the foreclosure proceeding in view of the prohibition on splitting a single cause of action. Simultaneous recourse to either of the two remedies, *i.e.* foreclosure of mortgage or filing an ordinary action to collect the debt, bars the creditor from enforcing the other.

Asset Pool filed a Motion for Reconsideration which was denied by the CA in its August 16, 2012 Resolution.[43] The appellate court, however, clarified that the prohibition is only against the simultaneous availment of the remedies of foreclosure of mortgage and the collection suit but the mortgagee may subsequently resort to a collection suit to recover any deficiency, if any.

Hence, this Petition for Review on *Certiorari* under Rule 45.

Issues

> 1. Whether or not the appellate court gravely erred in ruling that the case of *Bank of the Philippine Islands v. Coscolluela (Coscolluela)*[44] is controlling in the case at bar;

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41 CA *rollo*, p. 151.
42 Id. at 147-148.
43 Id. at 176-181.
44 526 Phil. 419 (2006).

2. Whether or not the appellate court gravely erred in failing to take into account the peculiar circumstances of the case at bar, such that there are five mortgaged properties, of which only two were foreclosed, to collect two of the seven loan obligations;

3. Whether or not the appellate court gravely erred in ruling that a previous filing of extrajudicial foreclosure of real estate mortgage barred a personal action for the collection of debt incurred by the spouses Berris; and

4. Whether or not the appellate court gravely erred in ignoring the rule that the principle against unjust enrichment should prevail over the procedural rule on multiplicity of suits.[45]

Our Ruling

After an assiduous review, we find the petition partly meritorious.

To put everything in its proper perspective, it must be stressed that the parties executed two loan agreements, namely:

(a) Loan Agreement dated November 15, 1995 with the total amount of ₱5,000,000.00;[46] and

(b) Discounting Line which was renewed on July 3, 1997[47] and on February 16, 1998 [48] with a total amount of ₱15,000,000.00 and ₱18,000,000.00, respectively, and valid until July 31, 1998.

These two loan facilities granted to the spouses Berris are separate and distinct from each other.

The Discounting Line facility was originally for the amount of ₱15,000,000.00 before it was renewed prior to its expiry on July 31, 1997. The facility was again renewed effective until July 31, 1998. Then, on February 16, 1998, the discounting facility was increased to ₱18,000,000.00 with the same expiration date, *i.e.* July 31, 1998. Notably, the discounting facility did not remotely refer to the November 15, 1995 Loan Agreement as its origin, to wit:

WHEREAS, the **BORROWER/s was granted a/an DISCOUNTING LINE in the amount not exceeding FIFTEEN MILLION PESOS (₱15,000,000.00) and has/have entered into a/an Agreement for Renewal of**

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[45] See *rollo*, p. 16.
[46] Records, pp. 390-396.
[47] Id. at 399-400.
[48] Id. at 397-398.

> **Discounting Line with the BANK for a period expiring on July 31, 1997** as acknowledged before ATTY. JETHRO L.F. VILLANUEVA under Doc. No. 164, Page No. 34, Book No. 18, Series of 1996.
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> WHEREAS, the **BORROWER/s has/have applied with the BANK for the renewal of the aforementioned credit facility/ies in the renewed amount of FIFTEEN MILLION PESOS (₱15,000,000.00),** and the BANK, upon representations and commitments of the BORROWER/s, approved the same subject to the terms and conditions hereunder set forth;[49] (Emphasis supplied)

On the other hand, the Loan Agreement dated November 15, 1995 was for the amount of ₱5,000,000.00 due after five years or beyond the effectivity date of the Discounting Line, *i.e.* July 31, 1998. It was granted under the Countryside Loan Fund or Social Security System - *Kabalikat sa Pagpapaunlad ng Industriya* to finance the establishment of a rice mill in Calauan, Laguna. Also, the agreement provided that the proceeds shall be used only for the purpose stated therein.[50] There was no mention at all that the proceeds of the loan was to be sourced from the discounting line facility.

Notably, the Loan Agreement also required the spouses Berris to execute PNs, to wit:

> 4. EVIDENCE OF INDEBTEDNESS. Availments or releases of all or part of the proceeds of the loan shall be evidenced by a promissory note duly executed and delivered by the BORROWER/s in the form and tenor acceptable to the BANK.[51]

Thus, the Berris couple executed PN No. 2-104-961106/TLS upon release of the loan amount of ₱5,000,000.00 under the November 15, 1995 Loan Agreement.

On the other hand, a Discounting Line, as explained in *Great Asian Sales Center Corp. v. Court of Appeals*[52] is a credit facility in which the financing company or bank buys the receivables of a business entity and makes profit out of the difference between the face value of the receivable and the discounted price, to wit:

> In the financing industry, the term "discounting line" means a credit facility with a financing company or bank, which allows a business entity to sell, on a continuing basis, its accounts receivable at a discount. The term "discount" means the sale of a receivable at less than its face value. The purpose of a discounting line is to enable a business entity to generate instant cash out of its receivables which are still to mature at future dates. The financing company or bank which buys the receivables makes its profit out of the difference between the face value of the receivable and the discounted price. Thus, Section 3 (a) of

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[49] Id. at 399.
[50] Id. at 392.
[51] Id. at 390.
[52] 431 Phil. 293 (2002).

the Financing Company Act of 1998 provides:

> "Financing companies" are corporations x x x primarily organized for the purpose of extending credit facilities to consumers and to industrial, commercial or agricultural enterprises by discounting or factoring commercial papers or accounts receivable, or by buying and selling contracts, leases, chattel mortgages, or other evidences of indebtedness, or by financial leasing of movable as well as immovable property."[53]

This explains why the loan proceeds of the four PNs, *i.e.* PN Nos. 2-104-980259/bdc, [54] 2-104-980296/bdc, [55] 2-104-980975 BD/C [56] and 2-104-981149/BDC[57] which were all drawn against the discounting line were already net of interests and/or other charges when released to the spouses Berris.

Contrary to Asset Pool's contention, PN No. 2-104-961106/TLS which was the first PN subject of the collection suit was not drawn against the Discounting Line. The terms of PN No. 2-104-961106/TLS were the same as those in the Loan Agreement, *i.e.* payable within a period of five years inclusive of six-month grace period *via* 18 quarterly amortizations on principal balance and based on the diminishing principal balance and payable every quarter in arrears. This also explains why the interests due on PN No. 2-104-961106/TLS were not immediately deducted from the loan proceeds.

In contrast, the loan proceeds of PN Nos. 2-104-980259/bdc, 2-104-980296/bdc, 2-104-980975 BD/C and 2-104-981149/BDC which were drawn against the Discounting Line were already net of the interests and/or other charges when released to the spouses Berris. In addition, the maturity date of these PNs did not go beyond the expiration of the Discounting Line on July 31, 1998 as opposed to PN No. 2-104-961106/TLS which was due on April 16, 2001 or five years from its execution on April 15, 1996. Even the marking at the end of the promissory note numbers, *i.e.* TLS and BDC shows that PN No. 2-104-961106/TLS should not be treated as the same obligation as PN Nos. 2-104-980259/bdc, 2-104-980296/bdc, 2-104-980975 BD/C and 2-104-981149/BDC.

Verily, the fact that both the Loan Agreement and the Discounting Line required the spouses Berris to execute PNs in favor of the bank for each availment or drawing, does not necessarily prove that they are one and the same obligation. In the absence of evidence to the contrary, the Term Loan Agreement should be regarded as a separate and distinct obligation of the spouses Berris although the same was also covered by a promissory note upon each drawing.

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[53] Id. at 310-311.
[54] Records, p. 383.
[55] Id. at 381.
[56] Id. at 379.
[57] Id. at 387.

In fact, in the demand letters sent by FEBTC to the spouses Berris, the bank was categorical that they sought to collect the outstanding principal balance of the spouses Berris from both the Loan Agreement and Discounting Line. While the demand letters did not specifically itemize the amount from each loan accommodation, *i.e.,* the Loan Agreement and Discounting Line, this did not necessarily mean that the spouses Berris had only one obligation to the bank as evidenced by the promissory notes issued by them.

Also, the fact that both the Loan Agreement and the PNs issued under the Discounting Line contained acceleration clauses, in that, failure to pay any amount due shall make all contracts or credit accommodations granted to the spouses Berris due and demandable and payable prior to the expiration of the stipulated term, do not make the two contracts one and the same, to wit:

Term Loan Agreement:

> g. **Non-payment when due of the principal and/or accrued interest thereon on any other credit accommodation granted to the BORROWER/s by the BANK**, which have become due and payable prior to the expiration of the stipulated term or that any entity have proceeded upon its right to sue the BORROWER/s even before having paid any letter of credit or guaranty as the case may be, issued by such entity for the account of the BORROWER/s.[58] (Emphasis supplied)

PNs under the Discounting Line:

> Upon the happening of any of the following events, FAR EAST BANK AND TRUST COMPANY or the holder, may at its option, forthwith accelerate maturity and the unpaid balance of the principal, as well as interest and other charges which have accrued, shall become due and payable without demand or notice **(1) default in payment or performance of any obligation of any of the undersigned to FAR EAST BANK AND TRUST COMPANY or its affiliated companies;** or (2) non-conformity to the revised rate of interest or failure to pay the revised rate of interest imposed by FAR EAST BANK AND TRUST COMPANY, made pursuant to the second paragraph hereof; or (3) if any of the undersigned shall become insolvent, make a general assignment for the benefit of creditors, or if any insolvency proceedings be instituted against any of them (4) a receiver appointed of, or a merit or order of attachment or garnishment be issued against any of the assets or income of any of them; or (5) the undersigned or any endorser or guarantor shall allow a judgment or money decree against them.[59] (Emphasis supplied)

There is nothing illegal or irregular with several contracts or agreements having similar stipulations with respect to the maturity dates and/or acceleration clauses. The parties are free to stipulate on the terms and conditions of the obligation which they deem convenient provided they are not

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[58] Id. at 393.

[59] Supra notes 15-18, at 378, 380, 382 and 386.

contrary to law, morals, good customs, public order, or public policy,[60] which in this case, the maturity of all obligations in case of default on either of them. The reference of one contract to the other does not automatically make them a single contract in the absence of evidence to the contrary, express or implied.

Having arrived at the conclusion that the Loan Agreement and the Discounting Line are separate and distinct obligations of the spouses Berris, we now come to the resolution of whether the institution of the extrajudicial foreclosure of mortgage barred the filing of the herein collection suit.

To recall, the PNs subject of the collection suit are as follows:

a) PN Nos. 2-104-961106/TLS;

b) PN 2-104-980259/bdc;

c) PN 2-104-980296/bdc;

d) PN 2-104-980975 BD/C; and

e) PN 2-104-981149/BDC

As elucidated above, PN No. 2-104-961106/TLS was drawn against the Loan Agreement while the four other PNs were drawn against the Discounting Line facility.

There is thus no basis to the contention of the spouses Berris that all the PNs issued by them pertained to their drawings under the Discounting Line facility.

To recall, the spouses Berris were declared in default in the herein case and thus failed to present any evidence in support of their contentions. Nonetheless, with the admission of Asset Pool that FEBTC indeed extra-judicially foreclosed the parcels of land covered by TCT Nos. 129163 and 74496 in payment for the obligations under PN Nos. 2-104-980258 BDC and 2-104-980888 BDC in the total amount of ₱6,949,222.22 inclusive of interests, penalties and other charges, we will consider the foregoing averments in the resolution of this case.[61]

The Loan Agreement was secured by a real estate mortgage on the parcels of land covered by TCT Nos. 129163 and 74496 and a chattel mortgage on the rice mill. In addition, the spouses Berris executed a Comprehensive Surety Agreement on November 15, 1995 as security for any

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[60] Article 1306, Civil Code of the Philippines.
[61] Records, p. 190.

existing or future indebtedness or obligations to FEBTC. On the other hand, the Discounting Line dated July 3, 1997 was secured by a chattel mortgage on the rice mill. Thereafter, on February 16, 1998, the Discounting Line was partially secured by a real estate mortgage on TCT Nos. 129613, 74496, 27852, 31079 and 296868.

Evidently, both the Loan Agreement and the Discounting Line were secured by the chattel mortgage, the Comprehensive Surety Agreement and the real estate mortgage. The real estate mortgage on the Loan Agreement, however, covers only TCT Nos. 129163 and 74496. Citing *Coscolluela*, the spouses Berris claim that the institution of the extra-judicial foreclosure of TCT Nos. 129163 and T-74496 for the payment of PN Nos. 2-104-980258 BDC and 2-104-980888 BDC under the discounting facility bars the collection suit filed by petitioner to demand payment of PN No. 2-104-961106/TLS under the Term Loan Agreement; and PN Nos. 2-104-980259/bdc, 2-104-980296/bdc, 2-104-980975 BD/C and 2-104-981149/BDC under the Discounting Line as it is considered as splitting of cause of action which is prohibited under Section 3, Rule of the Rules of Court.

We agree but with respect only to PN Nos. 2-104-980259/bdc, 2-104-980296/bdc, 2-104-980975 BD/C and 2-104-981149/BDC under the Discounting Line.

In *Coscolluela*,[62] all the PNs were issued under one single account, *i.e.,* the agricultural crop loan. Thus, when the bank therein foreclosed on the real estate mortgage for PNs 1 to 31 without including the other PNs, the bank waived its personal action to recover the amount covered by all the other PNs. Since the amount due on all PNs were due and demandable, the entire loan account must be included in the extrajudicial foreclosure and cannot be split into two separate actions, *i.e.* foreclosure and collection suit.

In the instant case, petitioner claims that all the PNs were issued under the Discounting Line while the subject of the extrajudicial foreclosure was the Loan Agreement. This is not accurate.

As gleaned from the records, PN No. 2-104-961106/TLS, which is included in the herein collection suit filed by FEBTC, is not issued under the Discounting Line but under the Loan Agreement. Clearly, petitioner's claim that PN Nos. 2-104-980258 BDC and 2-104-980888 BDC, which were subject of the extrajudicial foreclosure, are the PNs issued under the Loan Agreement lacks factual basis. To note, the parties did not present PN Nos. 2-104-980258 BDC and 2-104-980888 BDC as evidence but the evidence on record, *i.e.* the Loan Agreement and PN No. 2-104-961106/TLS, plainly disproved petitioner's contention.

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[62] Supra note 43.

Obviously, the subject of the extra-judicial foreclosure are the PNs (PN Nos. 2-104-980258 BDC and 2-104-980888 BDC) issued under the Discounting Line and not the Term Loan Agreement, as claimed by petitioner. Hence, when FEBTC did not include PN Nos. 2-104-980259/bdc, 2-104-980296/bdc, 2-104-980975 BD/C and 2-104-981149/BDC, which were likewise drawn against the Discounting Line facility, in the petition for extra-judicial foreclosure, it effectively waived its right to recover the amounts covered by the said PNs.

When the entire obligation of the spouses Berris under the Discounting Line became due and demandable upon their default, FEBTC had the option to either foreclose the real estate mortgage executed on TCT Nos. 129163, 74496, 27852, 31079 and 296868, or to foreclose the chattel mortgage on the rice mill, or to file a collection suit against the spouses Berris. Since FEBTC opted to file a petition for extrajudicial foreclosure of real estate mortgage but only as to PN Nos. 2-104-980258 BDC and 2-104-980888 BDC, the instant collection suit to recover the amounts covered by the other PNs under the Discounting Line, *i.e.* PN Nos. 2-104-980259/bdc, 2-104-980296/bdc, 2-104-980975 BD/C and 2-104-981149/BDC is therefore barred.

Petitioner cannot claim that only PN Nos. 2-104-980258 BDC and 2-104-980888 BDC were due and demandable at that time as their demand letters clearly show otherwise. Also, with the application of the acceleration clause, all the PNs became due and demandable even before its maturity upon the happening of the default by the spouses Berris.

Petitioner cannot split its cause of action on the Discounting Line by first filing a petition for extrajudicial foreclosure of the real estate mortgage on PN Nos. 2-104-980258 BDC and 2-104-980888 BDC and then institute a personal action for the collection of the other four PNs (PN Nos. 2-104-980259/bdc, 2-104-980296/bdc, 2-104-980975 BD/C and 2-104-981149/BDC) without violating the proscription against splitting a single cause of action.[63]

Section 3, Rule 2 of the Rules of Court provides that a party may not institute more than one suit for a single cause of action and if, two or more suits are instituted on the basis of the same cause of action, the filing of one or a judgment upon the merits in any one is available as ground for the dismissal of the others.

As ruled in *Coscolluela*:

> Indeed, in *Goldberg v. Eastern Brewing Co.*, the New York Supreme Court emphasized that:
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> It was held in the case of *Bendernagle v. Cocks, 19 Wend. 207*

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[63] Section 3, Rule 2 of the Rules of Court.

> *(32 Am. Dec. 448)*, that where a party had several demands or existing causes of action growing out of the same contract or resting in matter of account, which may be joined and sued for in the same action, they must be joined; and **if the demands or causes of action be split up, and a suit brought for part only, and subsequently a second suit for the residue is brought, the first action may be pleaded in abatement or in bar of the second action. . . .**
>
> It is not always easy to determine whether in a particular case under consideration, the cause of action is single and entire or separate. The question must often be determined, not by the general rules but by reference to the facts and circumstances of the particular case. Where deeds arising out of contract are distinct and separate, they give rise to separate cause of action for which separate action may be maintained; but it is also true that the same contract may give rise to different causes of action either by reason of successive breaches thereof or by reason of different stipulations or provisions of the contract. **The true rule which determines whether a party has only a single and entire cause of action for all that is due him, and which must be sued for in one action, or has a severable demand for which he may maintain separate suits, is whether the entire amount arises from one and the same act or contract or the several parts arise from distinct and different acts or contracts**.
>
> **Where there are entirely distinct and separate contracts, they give rise to separate causes of action for which separate actions may be instituted and presented**. When money is payable by installments, a distinct cause of action assails upon the following due by each installment and they may be recovered in successive action. On the other hand, where several claims payable at different times arise out of the same transactions, separate actions may be brought as each liability accounts. But where no action is brought until more than one is due, all that are due must be included in one action; and that if an action is brought to recover upon one or more that are due but not upon all that are due, a recovery in such action will be a bar to a several or other actions brought to recover one or more claims of the other claims that were due at the time the first action was brought.[64] (Emphasis supplied)

In sum, petitioner may institute two alternative remedies against the spouses Berris: either a personal action for the collection of the promissory notes issued under the Discounting Line or a real action to foreclose the mortgage, but not both, simultaneously or successively. Although we recognize the right of the mortgage creditor to recover the deficiency when the mortgaged properties are not enough to satisfy the entire obligation, the action is only instituted after the termination of the foreclosure proceedings and not during its pendency, so as not to violate the prohibition against splitting of cause of action.

However, the foregoing rule against splitting of cause of action is not applicable to the herein collection suit covering PN No. 2-104-961106/TLS which was drawn against the Loan Agreement.

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[64] Supra note 43, at 437-438.

As earlier discussed, the Loan Agreement is separate and distinct from the Discounting Line. Thus, there could be no violation of the prohibition against splitting a cause of action when FEBTC instituted a foreclosure of mortgage on TCT Nos. 129163 and 74496 for PN Nos. 2-104-980258 BDC and 2-104-980888 BDC drawn against the Discounting Line and successively filed a collection suit to recover the debt due under PN 2-104-961106/TLS which was drawn against the Loan Agreement.

Being separate and distinct contracts, FEBTC, as the mortgage creditor, may institute either a personal action for the collection of debt, or a real action to foreclose the mortgage under the Loan Agreement. Obviously, FEBTC chose to elect a personal action to recover the amount due on PN No. 2-104-961106/TLS by filing the herein complaint as it is not barred by nor violative of the rule on prohibition against splitting of cause of action.

Furthermore, the real estate mortgage is just an accessory contract, thus, it does not control the principal agreements, *i.e.* the Loan Agreement and the Discounting Line, as it is only dependent upon the latter obligations. Hence, even if the real estate mortgage secured all of the obligations of the spouses Berris to the bank, whether existing or future indebtedness, it will not modify nor change the fact that they entered into two separate and distinct obligations which give rise to separate actions regardless of whether they become due and demandable at the same time or not.

To note, the Loan Agreement was secured by a real estate mortgage on only two of the five real properties, *i.e.* TCT Nos. 129163 and 74496, of the spouses Berris. This further bolsters the fact that the Loan Agreement gives rise to a separate cause of action of either an extrajudicial foreclosure or a collection suit, alternatively.

The indivisibility of the mortgage was also not violated when the bank filed an extra-judicial foreclosure of TCT Nos. 129163 and 74496 to effect payment under the Discounting Line and thereafter, filed a collection suit for PN No. 2-104-961106/TLS under the Loan Agreement during the pendency of the foreclosure. Article 2089 of the Civil Code provides:

> Art. 2089. 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 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 them guarantees only a determinate portion of the credit.
>
> The debtor, in this case, shall have a right to the extinguishment of the pledge or mortgage as the portion of the debt for which each thing is specially answerable is satisfied.

In *Spouses Yu v. Philippine Commercial International Bank,*[65] we explained the rule on indivisibility of mortgage contracts, thus:

> This rule presupposes several heirs of the debtor or creditor and therefore not applicable to the present case. Furthermore, what the law proscribes is the foreclosure of only a portion of the property or a number of the several properties mortgaged corresponding to the unpaid portion of the debt where, before foreclosure proceedings, partial payment was made by the debtor on his total outstanding loan or obligation. This also means that 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 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. **In essence, indivisibility means that the mortgage obligation cannot be divided among the different lots, that is, each and every parcel under mortgage answers for the totality of the debt.**[66] (Emphasis supplied)

The records are bereft of any copy of the real estate mortgage constituted on TCT Nos. 129163 and 74496 as well as on TCT Nos. 27852, 31079 and 296868. The only basis of their existence are the provisions of the Term Loan Agreement and the Agreements for Renewal of Discounting Line, and the admission of the parties herein.

The extrajudicial foreclosure of the mortgage constituted over TCT Nos. 129163 and 74496 was effected solely for the satisfaction of the PN Nos. 2-104-980258 BDC and 2-104-980888 BDC under the Discounting Line although the Loan Agreement was also covered by the same mortgaged properties and was also due and demandable at that time. Being separate and distinct obligations, the FEBTC is not required to effect payment of the two obligations on the foreclosure of TCT Nos. 129163 and 74496.

Even assuming that the real estate mortgage has a blanket mortgage or dragnet clause covering all future loans without need of executing another set of security documents,[67] the same cannot restrict the bank from pursuing different actions on the two obligations of the spouses Berris although both obligations were already due and demandable. While the real estate mortgage

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[65] 519 Phil 740 (2006).
[66] Id. at 750-751.
[67] *Spouses Tecklo v. Rural Bank of Pamplona, Inc.*, 635 Phil 249, 258 (2010).

on TCT Nos. 129163 and 74496 covers both the Loan Agreement and the PNs under the Discounting Line, the two obligations exist independently of each other and cannot bar the institution of foreclosure or collection suit on either cases.

Similarly, in *Spouses Tecklo v. Rural Bank of Pamplona*,[68] the Court ruled that the failure of the bank to include the second loan in the petition for extrajudicial foreclosure by virtue of the blanket mortgage or dragnet clause in the real estate mortgage, is considered a waiver of its lien on the mortgaged property with respect to the second loan. However, the bank may still collect the unpaid second loan in an ordinary collection suit.

Hence, FEBTC's failure to include the PN No. 2-104-961106/TLS under the Loan Agreement in the foreclosure of TCT Nos. 129163 and 74496 is deemed to be a waiver of its lien on the said mortgaged properties. Nonetheless, the bank and its successor-in-interest, herein petitioner, may still collect the unpaid PN No. 2-104-961106/TLS under the Loan Agreement in an ordinary collection suit before its right to collect prescribes.

In sum, the appellate court correctly denied the petitioner's claim for collection of sum of money under PN Nos. 2-104-980259/bdc, 2-104-980296/bdc, 2-104-980975 BD/C and 2-104-981149/BDC drawn against the Discounting Line Facility as they are considered barred when FEBTC instituted a Petition for Extrajudicial Foreclosure for PN Nos. 2-104-980258 BDC and 2-104-980888 BDC likewise under the same Discounting Line, in violation of the prohibition against splitting of cause of action.

However, the appellate court erred when it denied petitioner's claim for collection of the amount due on PN No. 2-104-961106/TLS drawn against the Loan Agreement which is a separate and distinct contract and thus, cannot be barred by the prior institution of a petition for extrajudicial foreclosure to effect payment under the Discounting Line.

Based on the foregoing, the spouses Berris are liable to pay the outstanding balance on the principal due under the Loan Agreement in the amount of ₱3,055,555.54 plus the compounding monetary interest rate of 14.5% per *annum*.[69] To reiterate, the principal amount, *i.e.* ₱5,000,000.00 under the Loan Agreement was payable in 18 quarterly amortizations or ₱277,777.78 within a period of five years starting from April 15, 1996 to April 16, 2001.

Hence, with regard to the remaining balance of ₱3,055,555.54, the spouses Berris still have 11 quarterly amortizations[70] left unpaid on the

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[68] Id. at 260-261.
[69] Records, p. 384.
[70] ₱3,055,555.54 / ₱277,777.78 = 11 quarterly amortizations

principal of the Loan Agreement which shall earn the compounding monetary interest of 14.5% per *annum* starting from July 1998 to April 16, 2001, deducting therefrom the paid seven quarterly amortizations and their interests from April 1996 to June 1998. In the absence of evidence that the bank notified the spouses Berris of the revised interest rate at least five days before maturity, the 14.5% per *annum* compounding monetary interest rate shall apply.

In addition, a penalty interest rate of 1% on the amounts due, *i.e.* ₱3,055,555.54 plus the compounding monetary interest rate of 14.5% per *annum,* for every 30 days or a fraction thereof shall be paid by the spouses Berris from the time of default, *i.e.* the date of the extrajudicial demand or the receipt by the spouses Berris of the Final Demand Letter dated February 3, 1999 on February 10, 1999 as per Registry Return Receipt.[71]

The spouses Berris are also liable to pay 25% of the total amounts due, *i.e.* the principal outstanding balance, monetary interest of 14.5% per *annum* and penalty interest of 1%, as reimbursement for litigation expenses and attorney's fees.

WHEREFORE, the petition is **PARTLY GRANTED.** The March 23, 2012 Decision and August 16, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 92498 are hereby **AFFIRMED** with **MODIFICATION** in that the Spouses Buenafrido and Felisa Berris shall be jointly and severally **ORDERED** to pay petitioner Asset Pool A (SPV-AMC), Inc. the following:

(a) ₱3,055,555.54 as the outstanding balance on the principal amount due under the Term Loan Agreement;

(b) compounding monetary interest of 14.5% per *annum* on (a) from July 1998 to April 16, 2001;

(c) penalty interest of 1% on (a) and (b) for every 30 days or a fraction thereof computed from February 10, 1999 until the finality of this Decision; and

(d) litigation expenses and attorney's fees equivalent to 25% of (a), (b) and (c).

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[71] Records, p. 61.

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 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