

THIRD DIVISION

G.R. No. 252841 – PLANTERS DEVELOPMENT BANK (now CHINA BANK SAVINGS, INC.), Petitioner, v. HEIRS OF NILO P. DELOS SANTOS, namely: NENITA DELOS SANTOS (Surviving Spouse) and MICHAEL C. DELOS SANTOS (Son), Respondents.

Promulgated:

JAN 15 2025

~~MILO P. DELOS SANTO~~

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CONCURRING OPINION

CAGUIOA, J.:

I write this Concurring Opinion to expound on the views I have expressed, which were adopted in the *ponencia*.

I. There was an express waiver of demand; thus, prior demand was not necessary.

The waiver clause in the promissory note (PN) in this case is substantially the same as the waiver clause in *Bank of the Philippine Islands v. Court of Appeals*,¹ which clause was recognized by the Court as a valid waiver of demand. To compare:

Waiver Clause <i>Bank of the Philippine Islands v. Court of Appeals</i>	Waiver Clause Present Case
“I/We hereby waive any diligence, presentment, <i>demand</i> , protest or notice of non-payment o[r] dishonor with respect to this note or any extension thereof.” ²	“I/We expressly waive any requirement for diligence, presentment, demand, notice of non-payment and/or notice of dishonor of this note or of any and all checks or other negotiable instruments delivered by me/us in payment hereof.” ³

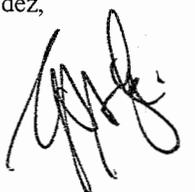
Notwithstanding the waiver clause in the PN, the Court of Appeals⁴ (CA) ruled that petitioner Planters Development Bank (now China Bank

¹ 523 Phil. 548 (2006) [Per J. Azcuna, Second Division].

² *Id.* at 559. (Emphasis in the original, citation omitted)

³ *Rollo*, p. 58, Promissory Note No. 98-044-910.

⁴ See Decision dated July 26, 2019 in CA-G.R. CV No. 109253, penned by Associate Justice Perpetua T. Atal-Paño and concurred in by Associate Justices Ramon M. Bato, Jr. and Myra V. Garcia-Fernandez, *id.* at 44–57.



Saving, Inc.) (petitioner) is bound to send a demand letter to respondents spouses Nilo P. Delos Santos and Nenita Delos Santos (Nenita) (collectively, spouses Delos Santos) pursuant to Section 12 of their Real Estate Mortgage dated November 9, 1995⁵ (REM), which reads in full:

12. All correspondence relative to this mortgage, including demand letters, summons, subpoenas, or notification of any judicial or extra-judicial action, shall be sent to the Mortgagor at the above given address or at the address that may hereafter be given in writing by the Mortgagor to the Mortgagee.⁶

Citing *Global Holiday Ownership Corp. v. Metropolitan Bank & Trust Co.*⁷ (*Global Holiday*), the CA held that having “explicitly mandated itself” to send a demand in the REM, Petitioner cannot renege on its undertaking by using a contrary provision in the PN.⁸

Contrary to the CA’s ruling, however, there is a key factual difference between *Global Holiday* and this case, which renders the former inapplicable to the latter: the PN herein contains a categorical waiver of demand. More, since the PN was executed after the REM, and the PN was a *particular* contract for the *principal obligation* of loan, the waiver contained in the PN supersedes the *earlier* and *general* correspondences clause found in the *accessory contract* of mortgage. Thus, I agree with petitioner’s interpretation that Section 12 of the REM as quoted above merely points to the address where correspondences, if any, should be sent.⁹ Such interpretation is in keeping with the spirit of harmonizing contractual provisions set out in Article 1374¹⁰ of the Civil Code.

II. Since prior demand was not necessary, petitioner need not prove the fact of demand.

Petitioner claims that it had sent demand letters to spouses Delos Santos; but owing to the fact that spouses Delos Santos only re-filed the Complaint 11 years after the foreclosure sale, and petitioner as a banking institution is only required by the Manual of Regulation for Banks to retain records for five years, petitioner could no longer produce copies.¹¹ Petitioner, however, was able to offer in evidence a copy of its Petition for Extra-judicial Foreclosure¹² (Petition for EJF) which contains the following allegation:

⁵ *Rollo*, pp. 59–62.

⁶ *Id.* at 61.

⁷ 607 Phil. 850 (2009) [Per J. Ynares-Santiago, Third Division].

⁸ *Rollo*, p. 50, CA Decision.

⁹ *Id.* at 26, Petition.

¹⁰ **Art. 1374.** The various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly. (1285)

¹¹ *Rollo*, pp. 27–28, Petition.

¹² *Id.* at 194–195.



The terms and conditions of the Deeds of Real Estate/Chattel mortgage/s were violated by reason of the failure of the debtors whose performance of the principal obligation is hereby secured by said mortgage, to pay their long overdue account despite several and repeated demands for payment of the same *copy of the Demand Letter and the corresponding registry return receipt are hereto attached and marked as Annexes "D" and "D-I[.]"*¹³ (Emphasis supplied)

Spouses Delos Santos admitted having received a copy of the Petition for EJF on April 26, 2001, ahead of the scheduled foreclosure sale on May 2, 2001.¹⁴ On the same day, spouses Delos Santos filed a Complaint¹⁵ before Branch 13, Regional Trial Court, Davao City seeking to enjoin the foreclosure sale as well as to nullify the REM based only on these two grounds: 1) the REM was executed ahead of the PN; and 2) petitioner failed to give spouses Delos Santos a detailed and full accounting of their remaining obligations prior to the foreclosure. **Significantly, lack of demand was not alleged.**

To emphasize, despite having had the opportunity to immediately raise it in 2001, spouses Delos Santos did not categorically deny having received a demand letter from petitioner. It was only when they re-filed the Complaint 11 years later that they first raised the issue, rather curiously phrasing it ambiguously as follows: “[petitioner] had repeatedly failed to give [spouses Delos Santos] the detailed and full accounting *and/or* demand of their remaining obligations, if any, to [petitioner] prior to the foreclosure, despite request from the latter.”¹⁶

Considering as well what the *ponente* had pointed out—that the Court has taken judicial notice of the standard practice in commercial transactions for banks to send demand letters to their debtors as part and parcel of every collection effort—the Court in the very same cited case of *Premiere Dev’t. Bank v. Central Surety & Insurance Co., Inc.*¹⁷ recognized that sending out demand letters is “subject to certain well-known exceptions, including the situation where the law or the obligations expressly declare it unnecessary.”¹⁸ Hence, given the clear and unequivocal waiver of demand in the PN, petitioner is not even required to prove demand.

III. Spouses Delos Santos were in default.

In *Spouses Rodriguez v. Export and Industry Bank Inc.*¹⁹ (*Spouses Rodriguez*), the Court outlined the elements for a valid extra-judicial foreclosure of a mortgage, to wit:

¹³ *Id.* at 195.

¹⁴ *Id.* at 64, Complaint dated April 30, 2001 in Civil Case No. 28,551-2001.

¹⁵ *Id.* at 63–68.

¹⁶ *Id.* at 132, Comment on Petition for Review on *Certiorari* dated January 12, 2021. (Emphasis supplied)

¹⁷ 598 Phil. 827 (2009) [Per J. Nachura, Third Division].

¹⁸ *Id.* at 847. (Citation omitted)

¹⁹ 903 Phil. 473 (2021) [Per J. Caguioa, First Division].

“x x x [F]irst, there must have been the failure to pay the loan obtained from the mortgagee-creditor; *second*, the loan obligation must be secured by a real estate mortgage; and *third*, the mortgagee-creditor has the right to foreclose the real estate mortgage either judicially or extra[
]judicially.”

Subsumed in the first and third elements is the requirement that the mortgagor-debtor be in default. *In the absence of a contractual stipulation to the contrary*, the mortgagor-debtor can only be deemed in default when the latter fails to pay despite a valid demand made by the mortgagee-creditor.²⁰ (Emphasis supplied, citation omitted)

All the elements have been established in this case:

- 1) Nenita admitted that they failed to pay their loan;
- 2) The loan is secured by a REM; and
- 3) The REM granted petitioner the right to foreclose.

Regarding default that is subsumed in the first and third elements, I submit that it has likewise been established. As discussed in *Spouses Rodriguez*, the mortgagee-creditor is generally required to have made a valid demand. However, there is a recognized exception that is present in this case: there is a contractual stipulation to the contrary. Paragraph 5 of the REM states:

*5. If at any time the Mortgagor shall fail or refuse to pay any of the amortizations on the indebtedness, or the interest when due or whatever other obligation herein secured . . . then all the amortizations and other obligations of the Mortgagor of any nature with the Mortgagee shall become due, payable and defaulted and the Mortgagee may immediately foreclose this Mortgage judicially or extrajudicially under Act No. 3135 as amended and/or under Act No. 1508 as amended.*²¹ (Emphasis supplied)

Moreover, the PN provides:

I/We expressly agree that time is of the essence as regards my/our payment of this note. Should I/We fail to pay any amortization or portion hereof when due, all the other amortization together with all interest that may have accrued thereon *shall immediately become due and payable . . .*

....

. . . I/We expressly waive any requirement for diligence, presentment, *demand*, notice of non-payment and/or notice of dishonor of this note or of any and all checks or other negotiable instruments delivered by me/us in payment hereof.²² (Emphasis supplied)

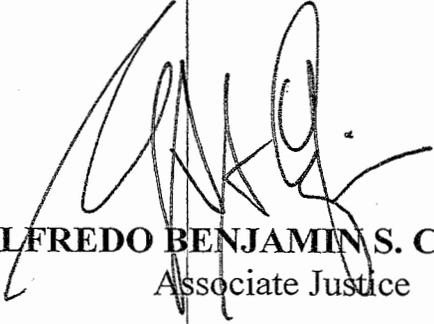
²⁰ *Id.* at 488–489.

²¹ *Rollo*, p. 59.

²² *Id.* at 58.

Since spouses Delos Santos expressly waived demand in the PN, demand was unnecessary for them to be in default.

Based on the foregoing, I vote in favor of the *ponencia*.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice