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directed to submit the transcripts thereof not later than three (3) months from date of effectivity of this Circular.

In fine then, the use of a tape recorder is more for the convenience of the stenographer, to facilitate the transcription of stenographic notes than a rule of thumb.

The Court has not hesitated to discipline court personnel who are found guilty of violations of the law. But it has likewise not hesitated to exonerate them whenever it finds the charges to be without basis.[14]

WHEREFORE, the instant administrative complaint against Armando B. Ignacio is *DISMISSED* for lack of merit.

SO ORDERED.

Puno (Chairman), Austria-Martinez, Tinga, and *Chico-Nazario, JJ.*, concur.

SECOND DIVISION

[G.R. No. 137916. December 8, 2004]

DEVELOPMENT BANK OF THE PHILIPPINES, *petitioner, vs.* **COURT OF APPEALS, ELPIDIO O. CUCIO, SPOUSES JACINTO GOTANGCO and CHARITY BANTUG,**[1] *respondents.*

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[14] *Santos v. Lorenzo*, 387 SCRA 406 (2002).

[1] Jacinto Gotangco died on February 8, 1992 and was survived by his wife, Charity Bantug, and their children, Jojina Ann, Jaime and Jacinto, Jr., all surnamed Gotangco.

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SYNOPSIS

Spouses Jacinto Gotangco and Charity Bantug mortgaged their seven parcels of land and another parcel of land known as Lot No. 168 awarded to them by the Director of the Bureau of Lands to the Development Bank of the Philippines (DBP) for their poultry project. On July 17, 1982, Spouses Gotangco executed in favor of Elpidio O. Gucio a contract to sell over the subject seven parcels of land. It was agreed by the parties then that the purchase price shall be paid directly to the DBP and applied to the mortgage indebtedness of the Spouses Gotangco. This transaction was known to the DBP. Conformably, Gucio made several remittances to the DBP and fully paid the purchase price. In the meantime, Spouses Gotangco applied for a restructuring of their loan which was also approved by the DBP. However, on July 3, 1988, the poultry farm of the Spouses Gotangco was gutted by fire. Thence, Spouses Gotangco failed to settle the balance of their loan with the DBP. Gucio then filed a complaint for injunction and damages against Spouses Gotangco and DBP. He alleged that despite full payment of the purchase price of the seven parcels of land, the DBP refused to turn over the owner's duplicate of title to spouses Gotangco and the latter also refused to execute a deed of absolute sale of said parcels of land in his favor. Spouses Gotangco and DBP separately filed their respective answers. While this case was pending and after notice to spouses Gotangco, the DBP filed an application for the extra-judicial foreclosure of the real estate mortgage executed in its favor by the Spouses Gotangco. Contrarily, the spouses Gotangco filed a petition for a writ of preliminary injunction which was granted by the trial court. After due proceedings, the trial court declared that the DBP was legally bound to release Spouses Gotangco's owner's duplicate of the certificates of title over the seven (7) parcels of land and the latter, in turn, could execute a deed of sale over Lot No. 168 covered by TCT No. NT-177647 in favor of Gucio. It also declared that the extra-judicial foreclosure of the mortgage was evidently made in bad faith and meant to harass the Spouses Gotangco during the pendency of the case, as such, the DBP was liable for moral damages, to spouses Gotangco. On appeal, the Court of Appeals affirmed the decision, but reduced the award of moral damages. Hence, this petition.

The petition was partially granted. The trial court issued a permanent injunction to enjoin the petitioner from pursuing its

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application for the extra-judicial foreclosure of the real estate mortgage on May 24, 1990 and the sale at public auction of the property covered by the said mortgage, on its finding that the petitioner failed to prove how much was the balance of the account of the respondents Spouses Gotangco to the petitioner as of said date during the trial. The RTC did not perpetually foreclose the right of the petitioner to file, under any and all circumstances, another application for the extra-judicial foreclosure of the said mortgage for failure of the respondent spouses to pay the correct balance of their account secured by the said mortgage. Otherwise, it would have deprived the petitioner of its right to foreclose the real estate mortgage, to cause the sale of the property at public auction and collect the balance of the account of the respondent spouses as provided for under the Real Estate Mortgage and the New Civil Code.

Further, the Court found no sufficient basis for the award of moral damages in favor of the respondent spouses based on Article 19 of the New Civil Code as a result of petitioner's application for foreclosure of the real estate mortgage. For one thing, Charity Bantug Gotangco did not testify. There was no factual basis for the award of moral damages in her favor.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE RAISED; EXCEPTIONS. — Under Rule 45 of the Rules of Civil Procedure, only questions of law may be raised in this Court on petition for review on *certiorari*. However, the Court may delve into and resolve questions of facts if grave abuse is shown or such findings are contrary to the evidence on record or are not supported by preponderant evidence.

2. ID.; ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; INJUNCTION ORDER MUST BE AS DEFINITE, CLEAR AND PRECISE AS POSSIBLE. — It bears stressing that an injunction order must be as definite, clear and precise as possible and, when practicable, it should inform the defendant of the act he is refrained from doing, without calling on him for inferences or conclusions about which persons might well differ. A permanent injunction should not be more comprehensive or restrictive than justified by the pleadings, evidence and usages of equity. Such must be tailored to each case; they should not infringe upon a conduct

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that does not produce the harm sought to be avoided. An injunction should be limited to the requirements of the case. An injunctive order should never be broader than is necessary to secure [to] the injured party, without injustice to the adversary, relief warranted by the circumstances of the particular case. The order should be adequately particularized, especially where some activities may be permissible and proper.

3. ID.; ID.; PERMANENT INJUNCTION; SHOULD NOT PERPETUALLY FORECLOSE THE RIGHT OF THE PETITIONER TO FILE, UNDER ANY AND ALL CIRCUMSTANCES, ANOTHER APPLICATION FOR THE EXTRAJUDICIAL FORECLOSURE OF THE MORTGAGE. — Obviously, the trial court issued a permanent injunction to enjoin the petitioner from pursuing its application for the extrajudicial foreclosure of the real estate mortgage on May 24, 1990 and the sale at public auction of the property covered by the said mortgage, on its finding that the petitioner failed to prove how much was the balance of the account of the respondents Spouses Gotangco to the petitioner as of said date during the trial. The RTC did not perpetually foreclose the right of the petitioner to file, under any and all circumstances, another application for the extrajudicial foreclosure of the said mortgage for failure of the respondents spouses to pay the correct balance of their account secured by the said mortgage. Otherwise, it would have deprived the petitioner of its right to foreclose the real estate mortgage, to cause the sale of the property at public auction and collect the balance of the account of the respondents spouses as provided for under the Real Estate Mortgage and the New Civil Code. It would have given the Spouses *carte blanche* not to pay the balance of their account to the petitioner without the mortgage being foreclosed by the latter. The trial court would have deprived the petitioner of its lien over the property without due process of law.

4. CIVIL LAW; OBLIGATIONS AND CONTRACTS; REAL ESTATE MORTGAGE; A VESTED INTEREST WHICH CONSTITUTES A CLOUD ON THE LEGAL TITLE. — It must be noted that the petitioner had a mortgage lien over the parcels of land covered by the real estate mortgage. It is a right *in rem*, a lien on the property. Like an attachment lien, it is a vested interest, an actual and substantial security, affording specific security for the satisfaction of the debt put in suit, which constitutes a cloud on

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the legal title. The lien subsists until the destruction thereof by sale of the property.

5. ID.; ID.; ID.; FAILURE OF THE CASHIER OF THE BANK TO PRODUCE THE RECORDS OF THE MORTGAGOR SHOULD NOT BE A JUSTIFICATION TO PERPETUALLY DEPRIVE THE MORTGAGEE OF ITS RIGHT TO FORECLOSE THE MORTGAGE. — For another, the trial court itself decided that it issued its order granting the petition of the respondents Spouses Gotangco not so much because of the latter's failure to pay at least 20% of their total outstanding obligation to the DBP, but because the extrajudicial foreclosure of the real estate mortgage would render moot and academic the issues raised by the parties in the case. One of these issues was whether the petitioner was obliged to turn over the owner's duplicate copies of TCT Nos. NT-166092 to NT-166098 to the respondents spouses to enable them to execute a deed of absolute sale over the said lots covered by the said titles to the petitioner. The failure of the cashier of the Cabanatuan branch of the DBP to produce the DBP records showing the precise balance of the account of the respondents spouses is not and should not be a justification to perpetually deprive the petitioner of its right to foreclose the mortgage.

6. ID.; HUMAN RELATIONS; ABUSE OF RIGHTS; ELUCIDATED. — The elements of abuse of rights are the following: (a) the existence of a legal right or duty; (b) which is exercised in bad faith; and (c) for the sole intent of prejudicing or injuring another. Malice or bad faith is at the core of said provision. Good faith is presumed and he who alleges bad faith has the duty to prove the same. Good faith refers to the state of the mind which is manifested by the acts of the individual concerned. It consists of the intention to abstain from taking an unconscionable and unscrupulous advantage of another. Bad faith does not simply connote bad judgment or simple negligence, dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of known duty due to some motives or interest or ill-will that partakes of the nature of fraud. Malice connotes ill-will or spite and speaks not in response to duty. It implies an intention to do ulterior and unjustifiable harm. Malice is bad faith or bad motive.

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APPEARANCES OF COUNSEL

Office of the Legal Counsel for petitioner.
Edgardo Villarin and *Edralin Mateo* for private respondents.

D E C I S I O N

CALLEJO, SR., *J.*:

This is a petition for review on *certiorari* of the Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 37873 which affirmed, with modification, the Decision[3] of the Regional Trial Court (RTC) of Palayan City, Branch 40, in Civil Case No. 0061-P.

The Spouses Jacinto Gotangco and Charity Bantug were the owners of seven parcels of land located in Palayan City, with total area of 21,000 square meters, covered by Transfer Certificates of Title (TCT) Nos. NT-166092 to NT-166098. The Spouses Gotangco were also the awardees of a parcel of land, identified as Lot No. 168, NG-130 (Pls-378), located in Canaderia, Palayan City, per Order of the Director of the Bureau of Lands dated February 22, 1961. The Spouses Gotangco declared Lot No. 168 for taxation purposes under Tax Declaration (TD) No. 0502 in 1980.

On August 22, 1980, the Spouses Gotangco secured a loan for their poultry project in Palayan City from the Development Bank of the Philippines (DBP) in the amount of ₱121,400.00. They then executed a real estate mortgage over the parcels of land.[4]

On December 16, 1981, the Spouses Gotangco executed a Deed of Undertaking[5] wherein they obliged themselves to secure

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[2] Penned by Associate Justice Martin S. Villarama, Jr., with Associate Justices Ma. Alicia Austria-Martinez (now an Associate Justice of the Supreme Court) and Romeo A. Brawner, concurring.

[3] Penned by Judge Conrado P. Labrador.

[4] Records, pp. 187-191.

[5] *Id.* at 192.

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a sales patent in their favor from the Bureau of Lands over Lot No. 168 covered by TD No. 0502 within two (2) years from the execution thereof. They also undertook to deliver to the DBP the owner's duplicate of the certificate of title over the property for the annotation of the real estate mortgage in favor of DBP at the dorsal portion thereof.[6]

On July 17, 1982, the Spouses Gotangco, as vendors, executed in favor of Elpidio O. Cucio a contract to sell over the seven parcels of land mortgaged to DBP for ₱50,000.00, payable in two installments. The parties agreed that the said amount shall be paid directly to DBP and applied to the mortgage indebtedness of the Spouses Gotangco and that, upon full payment of the purchase price, the Spouses shall execute a deed of sale over the said parcels of land in favor of Cucio.[7] The contract to sell was known to DBP.

Thereafter, Cucio made the following remittances to DBP in payment of the purchase price of the seven parcels of land: (a) ₱16,000.00 per Official Receipt (OR) No. 2418258 dated January 13, 1983; and (b) ₱5,000.00. The DBP considered the remittances as deposits and issued OR No. 2792644 dated February 18, 1983 to Cucio for the total amount of ₱21,000.00. The DBP informed Jacinto Gotangco, on February 18, 1983, of the said remittances made by Cucio.[8] It also requested the Spouses Gotangco to turn over the owner's copy of the title over the property covered by TD No. 0502 so that it could effect the substitution of the seven (7) parcels of land mortgaged by the Spouses Gotangco for the said lot.

Subsequently, the Spouses Gotangco were able to secure a sales patent over the parcel of land covered by TD. No. 0502, on the basis of which TCT No. NT-177647 was issued by the Register of Deeds on March 23, 1983. Conformably to the request of DBP, the Spouses Gotangco turned over the owner's

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[6] *Id.* at 193.

[7] *Id.* at 5.

[8] *Id.* at 374.

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duplicate of TCT No. NT-177647, and the mortgage executed in favor of DBP was duly annotated at the back of the said title. DBP kept the owner's copies of TCT Nos. NT-166092 to NT-166098 and TCT No. NT-177647.

On July 23, 1983, Jacinto Gotangco remitted the total amount of ₱57,097.36 to DBP in partial payment of his loan account for which DBP issued OR Nos. 324501 to 324504.[9] In 1984, Cucio paid the balance of the purchase price of the seven parcels of land to DBP.

In the meantime, the Spouses Gotangco applied for a restructuring of their loan with the DBP which was, thereafter, approved. In a Letter dated October 14, 1983, the DBP informed Cucio of the approval of the restructuring of the loan of the Spouses Gotangco and requested him to complete the downpayment of the purchase price of the seven (7) parcels of land so that the appropriate substitution of the property covered by TCT No. NT-177647, in lieu of the seven (7) other properties issued by the said Spouses as collateral for their loan, could be effected, and the appropriate deed of absolute sale over TCT Nos. NT-166092 to NT-166098 could then be executed by the said Spouses in favor of Cucio.[10] As such, Cucio paid the balance of the purchase price of the said lots to DBP on October 1, 1984.[11]

On July 3, 1988, the poultry farm of the Spouses Gotangco and the improvements thereon were gutted by fire.

On December 6, 1988, the DBP Pool of Accredited Insurance Companies informed the DBP that it had offered to settle the claim of the Spouses Gotangco for the proceeds of the insurance on their poultry farm for ₱167,149.14.[12] The Spouses apparently did not respond.

On February 20, 1989, the DBP wrote the Spouses Gotangco demanding payment of the balance of their loan in the amount

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[9] Exhibits "C" to "C-3", Id. at 369-372.

[10] Records, p. 361.

[11] Exhibit "10".

[12] Exhibit "D", Records, pp. 103-104.

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of ₱408,026.96 within ten (10) days from notice thereof. However, the Spouses failed to respond or pay their account with the DBP.

By September 30, 1989, the outstanding account of the Spouses Gotangco on the DBP or the principal of their loan account amounted to ₱246,183.74.[13] The DBP then wrote the Spouses Gotangco reminding them that their loan would mature on June 30, 1991.

Cucio then filed a complaint against the Spouses Gotangco and the DBP with the RTC of Palayan City for injunction and damages. Cucio alleged, *inter alia*, that despite his payment of the full purchase price of the seven (7) parcels of land covered by TCT Nos. NT-166092 to NT-166098 and his demands for the turnover of the owner's duplicates of the said title to the Spouses Gotangco, the DBP refused to do so. He further alleged that the DBP even demanded the payment of the interest on the loan account of the Spouses Gotangco. Furthermore, the Spouses Gotangco refused to execute a deed of absolute sale of the said parcels of land in his favor. Cucio prayed that, after due proceedings, judgment be rendered in his favor, thus:

> WHEREFORE, it is respectfully prayed that a Writ of Preliminary Mandatory Injunction be issued ordering defendants Jacinto Gotangco and Charity Bantug to execute the final Deed of Sale over TCT Nos. NT-166092, NT-166093, NT-166094, NT-166095, NT-166096, NT-166097 and NT-166098 and to submit additional collaterals to the Development Bank of the Philippines (DBP) and the DBP to release the owner's copies of said titles from its possession and deliver them to plaintiff.
>
> After hearing, making the preliminary injunction permanent and ordering the defendants, jointly and severally, to pay plaintiff moral damages, the amount of which is left to the sound discretion of the Honorable Court; actual damages of ₱50,000.00; attorney's fee of ₱30,000.00 and the cost of the suit.
>
> Plaintiff prays for other remedies under the premises.[14]

The Spouses Gotangco filed their answer[15] with counterclaim, alleging that they could not be faulted for their failure to execute

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[13] Exhibit "B", Id. at 98.

[14] Records, p. 3.

[15] *Id.* at 18.

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a deed of sale in favor of Cucio over the said parcels of land because the latter did not notify them that he had already made the complete payment of the ₱50,000.00 purchase price thereof to DBP. According to the Spouses Gotangco, considering that the DBP had given its implied consent to the contract to sell over the subject parcels of land, it was the DBP's obligation to release the titles after complete payment was made, following the submission to it of TCT No. NT-177647, the substitute collateral for their loan.

In their cross-claim against the DBP, the Spouses Gotangco alleged the following:

> 24. That on account of non-approval of loan and non-release of collaterals/securities by the DBP, the defendants Gotangcos were unnecessarily dragged into litigation by the plaintiff where the DBP alone should have been sued in the first place, for all these, the DBP alone should suffer if ever the Spouses Gotangco will be adjudged liable to the plaintiff; for all the damages.[16]

The Spouses Gotangco prayed that, after due proceedings, judgment be rendered in their favor, thus:

> WHEREFORE, facts and premises considered, it is most respectfully prayed that JUDGMENT BE RENDERED:
>
> 1. DISMISSING THE COMPLAINT for lack of cause of action and other grounds stated in the Special and Affirmative Defenses;
> 2. ON COUNTERCLAIM, condemning the plaintiff to pay moral damages of ₱100,000.00, attorney's fees of ₱25,000.00, more or less, and litigation expenses of ₱10,000.00;
> 3. By way of cross-claim, ordering the other defendant DBP to pay whatever amount the defendants Gotangcos may suffer in the event they may be adjudged liable to the plaintiff.
>
> GRANTING UNTO THE DEFENDANTS SPOUSES GOTANGCO reliefs and other remedies just and proper under the premises and the law.[17]

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[16] *Id.* at 20.

[17] *Id.* at 21.

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In its answer,[18] the DBP admitted that it charged Cucio interest on the Spouses Gotangco's loan; however, it denied that it consented to the transaction between the Spouses Gotangco relative to the seven (7) parcels of land claimed by Cucio. In its answer to the cross-claim,[19] the DBP, likewise, admitted receiving the ₱50,000.00 purchase price of the seven parcels of land from Cucio but only as deposit, and agreeing verbally to the release of the properties, but only after the Spouses Gotangco shall have fulfilled the conditions set forth in the real estate mortgage. It further alleged that the Spouses Gotangco failed to comply with the said conditions, and that their account remained dormant; hence, it refused to release the owner's duplicate copies of the titles of the properties to the Spouses Gotangco.

While the case was pending, the DBP informed the Spouses Gotangco in a Letter dated February 20, 1990[20] that it was going to have the mortgage foreclosed for their failure to settle their account. Jacinto Gotangco arrived at the Cabanatuan branch office of the DBP to ascertain the balance of his bank account but received no satisfactory answer. But the DBP sent a letter[21] to the Spouses Gotangco on May 24, 1990, warning them anew that it would institute foreclosure proceedings for their failure to fulfill their loan obligations which already amounted to ₱737,474.33 as of April 30, 1990. On June 8, 1990, the Spouses Gotangco wrote the DBP requesting for an updated statement of their account and the application of their payments, inclusive of the proceeds of their insurance claims.[22]

On the same date, the DBP filed an application for the extrajudicial foreclosure of the real estate mortgage executed in its favor by the Spouses Gotangco.[23] Appended to the application

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[18] *Id.* at 31.

[19] *Id.* at 39.

[20] *Id.* at 53.

[21] *Id.* at 107.

[22] *Id.* at 110.

[23] *Id.* at 108-110.

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was a statement of account of the Spouses. On June 7, 1990, Deputy Sheriff Rubentito Elonia issued a Notice of Sale set on June 28, 1990 to satisfy the obligation of the Spouses Gotangco to the DBP.[24]

The Spouses Gotangco wrote DBP anew, on June 14, 1990, protesting the foreclosure, claiming that they owed DBP only the amount of ₱246,183.74 as of October 31, 1988.[25] However, the DBP was undaunted.

The Spouses Gotangco forthwith filed a petition before the trial court for a writ of preliminary injunction[26] to enjoin the public auction, alleging that the extrajudicial foreclosure of the real estate in favor of the DBP would render the decision of the court on the merits moot and academic.[27]

The DBP opposed the motion, contending that the balance of the account of the Spouses Gotangco as of April 30, 1990 was ₱737,474.33, exclusive of interests and expenses.[28]

The trial court issued a Temporary Restraining Order dated June 26, 1990. After due hearing, the trial court issued an Order on October 4, 1990, granting the petition of the Spouses Gotangco for a writ of preliminary injunction on a bond of ₱50,000.00 pending the resolution of the matters raised in the main case.[29] A writ of preliminary injunction was issued by the trial court after the Spouses Gotangco posted a bond of ₱50,000.00. Consequently, the writ was issued on November 12, 1990.[30]

The trial court issued a subpoena d*uces tecum* to the cashier of the DBP in Cabanatuan City for the production of the Spouses Gotangco's bank records reflecting the balance of their account.

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[24] *Id.* at 112-113.

[25] *Id.* at 115.

[26] *Id.* at 83.

[27] *Id.* at 84.

[28] *Id.* at 89.

[29] *Id.* at 198-199.

[30] *Id.* at 203.

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However, the cashier failed to comply.[31] During the trial, Jacinto Gotangco testified that he suffered mental anguish and serious anxieties because of the threatened extrajudicial foreclosure of the real estate mortgage in favor of DBP. Charity Gotangco failed to testify. The Spouses also adduced in evidence the statement of their account from the DBP.[32]

On February 8, 1992, Jacinto Gotangco died intestate and was survived by his wife Charity Bantug Gotangco and their children, Jojina Ann Gotangco, Jaime Gotangco and Jacinto B. Gotangco, Jr.[33]

On April 14, 1992, the RTC rendered judgment as follows:

WHEREFORE, judgment is hereby rendered:

(1) Ordering DBP to release the owner's duplicate certificates of TCT Nos. NT-166092 to NT-166098 to the Gotangcos;

(2) Declaring the owner's duplicate certificate TCT No. NT-177647 in the name of the Gotangcos as a replacement thereof as their collateral to their restructured loan with DBP;

(3) Ordering the Gotangcos to, thereafter, execute a deed of absolute sale covering the properties described in TCT Nos. NT-166092 to NT-166098 in favor of Cucio;

(4) Declaring the writ of preliminary injunction issued on November 12, 1990, enjoining DBP from foreclosing the properties of the Gotangcos covered by TCT No. NT-166092 to NT-166098 and TCT No. NT-177647 and from the scheduled auction sale thereof permanent;

(5) Ordering DBP to pay the Gotangcos the sum of ₱250,000.00 as moral damages; and

(6) Ordering DBP to pay costs.[34]

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[31] *Id.* at 334..

[32] Exhibit "8".

[33] Records, p. 388.

[34] *Id.* at 415-429.

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The trial court declared that the DBP was legally bound to release the Spouses Gotangco's owner's duplicate of the certificates of title over the seven (7) parcels of land; the latter, in turn, could execute a deed of sale over the property covered by TCT No. NT-177647 in favor of Cucio. The trial court further ruled that the DBP prematurely sought the extrajudicial foreclosure of the mortgaged properties considering that as of September 30, 1989, the outstanding loan balance of the Spouses Gotangco was ₱246,183.74 with maturity date set on June 30, 1991; and yet the DBP foreclosed the mortgage extrajudicially for the amount of ₱737,474.33. It declared that the extrajudicial foreclosure of the mortgage was evidently made in bad faith and meant to harass the Spouses Gotangco during the pendency of the case. As such, according to the trial court, the DBP was liable for moral damages to the said Spouses.

On appeal by the DBP, the CA affirmed the decision, but reduced the award of moral damages to ₱50,000.00. The *fallo* of the decision of the CA reads:

> WHEREFORE, premises considered, the decision of the Regional Trial Court of Palayan City, Nueva Ecija, Branch 40, in Civil Case No. 0061-P is AFFIRMED with modifications. Appellant DBP is hereby ordered to release the owner's duplicate certificates of TCT Nos. NT-166092 to NT-166098 to the Gotangcos and the Gotangco spouses to execute the Deed of Sale in favor of Elpidio O. Cucio who shall cause the annotation of the mortgage in favor of DBP at the back of the new certificates of title in his name. Appellant DBP is further ordered to pay the amount of ₱50,000.00 as moral damages to the Gotangcos. No pronouncement as to costs.[35]

The appellate court modified its decision on motion of the DBP, as follows:

> WHEREFORE, premises considered; the decision of the Regional Trial Court of Palayan City, Nueva Ecija, Branch 40, in Civil Case No. 0061-P, is AFFIRMED with modifications. Appellant DBP is hereby ordered to release the owner's duplicate certificates of TCT Nos. NT-166092 to 166098 to the Gotangcos and the Gotangco

[35] *Rollo*, p. 73.

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spouses to execute the Deed of Sale in favor of Elpidio O. Cucio who shall cause the annotation of the mortgage in favor of DBP at the back of the new certificates of title in his name. **Thereafter, pursuant to the subsisting mortgage agreements, DBP shall be entitled to the possession of the new certificates of title until the mortgage indebtedness is fully satisfied.** Appellant DBP is further ordered to pay the amount of ₱50,000.00 as moral damages to the Gotangcos. No pronouncement as to costs.[36]

The Present Petition

The DBP, now the petitioner, filed the instant petition raising as errors the following:

1. THE PERMANENT INJUNCTION ISSUED BY THE TRIAL COURT AND AFFIRMED BY THE RESPONDENT COURT OF APPEALS EFFECTIVELY NULLIFIES DBP'S MORTGAGE LIEN OVER THE PROPERTIES AND WILL CONTRAVENE THE MANDATORY PROVISIONS OF P.D. NO. 385.

2. THERE IS NEITHER FACTUAL NOR LEGAL BASIS FOR THE GRANT OF MORAL DAMAGES IN FAVOR OF THE GOTANGCOS AS AGAINST PETITIONER DBP.[37]

Prefatorily, the issue of whether or not the petitioner caused the extrajudicial foreclosure of the real estate mortgage to harass the respondents, the Spouses Gotangco, despite the pendency of the case before the trial court, is one of fact. Under Rule 45 of the Rules of Civil Procedure, only questions of law may be raised in this Court on petition for review on *certiorari.* However, the Court may delve into and resolve questions of facts if grave abuse is shown or such findings are contrary to the evidence on record or are not supported by preponderant evidence.[38]

The petitioner asserts that it had the right to enforce its mortgage lien over the property notwithstanding the transfer of ownership over the same to a third party. It contends that it had the right

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[36] *Id.* at 76.

[37] *Id.* at 40.

[38] *Valenzuela v. Court of Appeals*, 253 SCRA 303 (1996).

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to institute foreclosure proceedings, considering that the respondents Spouses Gotangco failed to comply with the terms of the real estate mortgage executed in favor of DBP. The petitioner argues that, with the permanent writ of preliminary injunction issued by the trial court against the petitioner as affirmed by the respondent court, the petitioner, is forever barred from foreclosing the properties mortgaged in the event the loan obligation is never paid, in contravention with the provisions of Presidential Decree (P.D.) No. 385.[39] It posits that it cannot be held liable for moral damages for exercising its right under the real estate mortgage and the law. The petitioner further argues that, even if the respondents Spouses Gotangco suffered mental anguish as a result of the foreclosure, the same qualifies as *damnum absque injuria*. Besides, the foreclosure did not push through because of the trial court's injunction order; hence, there was no damage done to the respondents Spouses Gotangco.

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[39] SECTION 1. It shall be mandatory for government financial institutions, after the lapse of sixty (60) days from the issuance of this Decree, to foreclose the collaterals and/or securities for any loan, credit accommodation, and/or guarantees granted by them whenever the arrearages on such account, including accrued interest and other charges, amount to at least twenty percent (20%) of the total outstanding obligations, including interest and other charges, as appearing in the books of account and/or related records of the financial institution concerned. This shall be without prejudice to the exercise by the government financial institution of such rights and/or remedies available to them under their respective contracts with their debtors, including the right to foreclose on loans, credits, accommodations and/or guarantees on which the arrearages are less than twenty percent (20%).

SECTION 2. No restraining order, temporary or permanent injunction shall be issued by the court against any government financial institution in any action taken by such institution in compliance with the mandatory foreclosure provided in Section 1 hereof, whether such restraining order, temporary or permanent injunction is sought by the borrower(s) or any third party or parties, except after due hearing in which it is established by the borrower and admitted by the government financial institution concerned that twenty percent (20%) of the outstanding arrearages has been paid after the filing of foreclosure proceedings.

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There is merit in petitioner's contention.

The petitioner and the CA, however, misconstrued the width and breadth of the permanent injunction issued by the RTC and affirmed by the CA, as well as the purpose of the trial court in issuing the said writ.

It bears stressing that an injunction order must be as definite, clear and precise as possible and, when practicable, it should inform the defendant of the act he is refrained from doing, without calling on him for inferences or conclusions about which persons might well differ. A permanent injunction should not be more comprehensive or restrictive than justified by the pleadings, evidence and usages of equity.[40] Such must be tailored to each case; they should not infringe upon a conduct that does not produce the harm sought to be avoided.[41] An injunction should be limited to the requirements of the case.[42] An injunctive order should never be broader than is necessary to secure [to] the injured party, without injustice to the adversary, relief warranted by the circumstances of the particular case. The order should be adequately particularized, especially where some activities may be permissible and proper.[43]

Obviously, the trial court issued a permanent injunction to enjoin the petitioner from pursuing its application for the extrajudicial foreclosure of the real estate mortgage on May 24, 1990 and the sale at public auction of the property covered by the said mortgage, on its finding that the petitioner failed to prove how much was the balance of the account of the respondents Spouses Gotangco to the petitioner as of said date during the trial. The RTC did not perpetually foreclose the right of the petitioner to file, under any and all circumstances, another application for the extrajudicial foreclosure of the said mortgage for failure of the respondents spouses to pay the correct balance

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[40] *Advest Video v. Nueces County*, 996 S.W.2d 245 (1999).

[41] *Brower v. Hubbard*, 643 So.2d 28 (1994).

[42] *Matlock v. Weets*, 531 N.E.2d 118 (1995).

[43] See note 39.

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of their account secured by the said mortgage. Otherwise, it would have deprived the petitioner of its right to foreclose the real estate mortgage, to cause the sale of the property at public auction and collect the balance of the account of the respondents spouses as provided for under the Real Estate Mortgage and the New Civil Code.[44] It would have given the Spouses *carte blanche* not to pay the balance of their account to the petitioner without the mortgage being foreclosed by the latter. The trial court would have deprived the petitioner of its lien over the property without due process of law.

It must be noted that the petitioner had a mortgage lien over the parcels of land covered by the real estate mortgage. It is a right *in rem*, a lien on the property.[45] Like an attachment lien, it is a vested interest, an actual and substantial security, affording specific security for the satisfaction of the debt put in suit, which constitutes a cloud on the legal title.[46] The lien subsists until the destruction thereof by sale of the property.[47]

Patently, the trial court issued the writ of preliminary injunction not so much because of the failure of the respondents Spouses Gotangco to pay at least 20% of their account as provided for in Section 1 of P.D. No. 385, but because of the then still unresolved issue of whether the petitioner was obliged to turn over the owner's duplicate copies of TCT Nos. NT-166092 to

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[44] Art. 2126. The mortgage directly and immediately subjects the property upon which it is imposed, whoever the possessor may be to the fulfillment of the obligation for whose security it was constituted.

Art. 2127. The mortgage extends to the natural accessions, to the improvements, growing fruits, and the rents or income not yet received when the obligation becomes due, and to the amount of the indemnity granted or owing to the proprietor from the insurers of the property mortgaged, or in virtue of expropriation for public use, with the declarations, amplifications and limitations established by law, whether the estate remains in the possession of the mortgagor, or passes into the hands of a third person.

[45] *Ganzon v. Inserto*, 123 SCRA 713 (1983).

[46] *The Government of the Philippine Islands v. Mercado*, 67 Phil 400 (1939).

[47] *Marshall & Isley Bank v. Greene*, 275 N.E. 425 (1938).

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NT-166098 to the respondents Spouses Gotangco even after the latter had substituted the property covered by TCT No. NT-177647 as security for their loan. This is indubitable from the Order of the trial court dated October 4, 1990 granting the petition of the respondents Spouses Gotangco for the issuance of a writ of preliminary injunction:

> The right of the Gotangcos over the subject properties sought to be protected at this stage of the proceedings in the case filed against them by Elpidio O. Cucio consists not so much against the lack of legal and factual basis on the part of the DBP in foreclosing their properties because their arrearages on their account with it fall short of the requirement under Sec. 1 of PD 385, but more on the liability of the DBP to release the owner's duplicate certificates of TCT Nos. NT-166092 to NT-166098 in view of their having already substituted them with TCT No. NT-177647 covering the parcel of land under Tax Declaration No. 0502 (Exh. 5, Injunction, record, p. 106). In fact, said exhibit speaks of Mayor Cucio's purchase of the properties mortgaged by the Gotangcos with the DBP. This is precisely the cause of action of Mayor Cucio against the Gotangcos who, in turn, filed a cross-claim against the DBP.
>
> What actually is left for the determination of the Court now during the hearing on the merits of the main case is whether or not Mayor Cucio has completed the payment of the agreed price on the mortgaged properties of the Gotangcos with the DBP so that the DBP will finally be ordered to release the owner's duplicate certificates of TCT No. NT-166092 to NT-166098 and for the Gotangcos to execute the final deed of sale thereon in the event that DBP fails (1) to prove that it did not give its consent or express conformity to the contract to sell executed between Mayor Cucio and the Gotangcos; and (2) to prove that the Gotangcos failed to comply with the alleged conditions for the release of the properties (record, pp. 39-40).
>
> Pending resolution on the matters raised in the main case, to allow foreclosure of the properties by the DBP at this time would, indeed, render the main case nugatory and ineffectual.[48]

Indeed, the trial court made it clear that it granted the petition of the respondents Spouses Gotangco for the issuance of a

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[48] Records, p. 199.

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writ of preliminary injunction "pending resolution on the matters raised in the main case."[49] The Spouses Gotangco, in fact, declared in their motion for a writ of preliminary injunction that they filed the said motion to prevent the issues in the main case from becoming moot and academic.

The trial court had already resolved the matter in its decision when it ruled that the petitioner was obliged to turn over the owner's duplicate certificates of said titles over the seven parcels of land to the respondents Spouses Gotangco to enable the latter to execute a deed of sale over the said property in favor of Cucio. In a real sense, the writ of preliminary injunction issued by the RTC had become *functus officio*. There was no longer a valid justification for the issuance of a permanent injunction to perpetually enjoin the petitioner from foreclosing the real estate mortgage.

In affirming the decision of the RTC, permanently enjoining the petitioner from foreclosing the real estate mortgage in its favor, the CA ruled that since the trial court failed to determine the exact amount of the balance of the account of the respondents Spouses Gotangco due to the petitioner's refusal to produce before the trial court the records slowing the balance of the account of the respondents spouses, it cannot be determined whether the latter failed to pay the twenty percent (20%) of their total outstanding obligation as envisaged in Section 1 of P.D. No. 385.[50]

We do not agree with the CA. For one thing, no less than the respondents Spouses Gotangco adduced in evidence the statement of account issued by the petitioner showing the balance of their account.[51]

For another, the trial court itself decided that it issued its order granting the petition of the respondents Spouses Gotangco

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[49] *Id.*

[50] *Supra.*

[51] Exhibit "8".

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not so much because of the latter's failure to pay at least 20% of their total outstanding obligation to the DBP, but because the extrajudicial foreclosure of the real estate mortgage would render moot and academic the issues raised by the parties in the case. One of these issues was whether the petitioner was obliged to turn over the owner's duplicate copies of TCT Nos. NT-166092 to NT-166098 to the respondents spouses to enable them to execute a deed of absolute sale over the said lots covered by the said titles to the petitioner. The failure of the cashier of the Cabanatuan branch of the DBP to produce the DBP records showing the precise balance of the account of the respondents spouses is not and should not be a justification to perpetually deprive the petitioner of its right to foreclose the mortgage.

On the issue of moral damages, we agree with the trial court and the CA that the initiation of extrajudicial foreclosure by the petitioner of the real estate mortgage *pendente lite* was premature; hence, inappropriate. Although the Spouses Gotangco failed to heed the petitioner's repeated demands for the updating of their account and the payment of the balance of the loan, it behooved the petitioner to tarry until the trial court had decided, with finality, the case on its merits.

Nevertheless, we find no sufficient basis for the award of moral damages in favor of the respondents spouses based on Article 19 of the New Civil Code as a result of petitioner's application for foreclosure of real estate mortgage. For one thing, Charity Bantug Gotangco did not testify. There is no factual basis for the award of moral damages in her favor.

Abuse of right under Article 19 of the New Civil Code, on which the RTC anchored its award for damages and attorney's fees, provides:

> Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

The elements of abuse of rights are the following: (a) the existence of a legal right or duty; (b) which is exercised in bad faith; and (c) for the sole intent of prejudicing or injuring another.

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Malice or bad faith is at the core of said provision.[52] Good faith is presumed and he who alleges bad faith has the duty to prove the same.[53] Good faith refers to the state of the mind which is manifested by the acts of the individual concerned. It consists of the intention to abstain from taking an unconscionable and unscrupulous advantage of another. Bad faith does not simply connote bad judgment or simple negligence, dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of known duty due to some motives or interest or ill-will that partakes of the nature of fraud.[54] Malice connotes ill-will or spite and speaks not in response to duty. It implies an intention to do ulterior and unjustifiable harm. Malice is bad faith or bad motive.[55]

The Spouses Gotangco failed to prove malice on the part of the petitioner. There was, for sure, a divergence of opinion between the petitioner, on the one hand, and the Spouses Gotangco, on the other, relative to the issue of whether Cucio's payments were mere deposits or partial payments for the lot covered by TCT No. NT-177647, and whether the respondents Spouses Gotangco had agreed to the offer of the pool of insurers to pay the amount of ₱167,149.14 as indemnity for the loss of their poultry farm. However, the bare fact that the petitioner filed its application of the extrajudicial foreclosure of the mortgage, notwithstanding those differences, cannot thereby give rise to the conclusion that the petitioner did so with malice, to harass the Spouses Gotangco. The records show that, time and again, the petitioner had sent notices to the respondents spouses and demanded the updating of their account and the payment of the balance thereof, but the respondents spouses failed to comply. In the meantime, interests and penalties on the loan considerably

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[52] *ABS-CBN Broadcasting Corporation v. Court of Appeals*, 301 SCRA 572 (1999).

[53] *Chua v. Court of Appeals*, 242 SCRA 341 (1995).

[54] *Cojuangco, Jr. v. Court of Appeals*, 309 SCRA 602 (1999).

[55] *Borjal v. Court of Appeals*, 301 SCRA 1 (1999).

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the petitioner had sent notices to the respondents spouses and demanded the updating of their account and the payment of the balance thereof, but the respondents spouses failed to comply. In the meantime, interests and penalties on the loan considerably accrued. Under the terms of the real estate mortgage and its charter, the petitioner had the right to foreclose the said mortgage extrajudicially. Hence, the petitioner was constrained to file its application for the extrajudicial foreclosure of the mortgage for the Spouses Gotangco's past due obligation. Instead of settling their account, the Spouses filed their petition for writ of preliminary injunction. Because of the preliminary injunction issued by the trial court, the foreclosure was aborted. Under the circumstances, it cannot be gainsaid that the petitioner acted in bad faith or with malice in seeking the extrajudicial foreclosure of the mortgage in its favor.

IN LIGHT OF ALL THE FOREGOING, the petition is *PARTIALLY GRANTED*. The assailed Decision of the Court of Appeals is *AFFIRMED WITH MODIFICATION*. The permanent injunction issued by the Regional Trial Court, as affirmed by the Court of Appeals; and the award for moral damages in favor of the Spouses Jacinto Gotangco and Charity Bantug are *DELETED*. No costs.

SO ORDERED.

Puno (Chairman), Tinga, and *Chico-Nazario, JJ.*, concur.

Austria-Martinez, J., took no part.