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FIRST DIVISION

[G.R. No. 224138; October 6, 2021]

DEVELOPMENT BANK OF THE PHILIPPINES, *Petitioner*, *v.* **EVELINA TOGLE and CATHERINE GERALDINE TOGLE,** *Respondents*.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

Petitioner Development Bank of the Philippines (DBP) assails the following dispositions of the Court of Appeals in CA-G.R. CV No. 01726[1] entitled *Evelina Togle and Catherine Geraldine N. Togle v. Register of Deeds of Davao City, Development Bank of the Philippines*:

1. **Decision**[2] dated September 28, 2015, affirming the trial court's ruling which nullified DBP's foreclosure of the mortgaged property; and

2. **Resolution**[3] dated March 17, 2016, denying DBP's motion for reconsideration.

Antecedents

By Complaint dated August 23, 1999, respondents Evelina Togle (Evelina) and her daughter Catherine Geraldine Togle (Catherine) sued DBP for Breach of Contract, Annulment of Mortgage and Foreclosure Proceedings, and Reconveyance with Prayer for Preliminary Injunction and/or Temporary Restraining Order before the Regional Trial Court, Davao City.[4] They essentially alleged:

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[1] Penned by Associate Justice Edgardo T. Lloren and concurred in by Associate Justices Edgardo A. Camello and Ronaldo B. Martin, *rollo*, p. 110.

[2] *Id.* at 89-110.

[3] *Id*. at 111-112.

[4] *Id*. at 18.

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Evelina and her late husband Jesus Togle are the owners of two (2) agricultural lots located in Bangkas Heights, Toril, Davao City under Transfer Certificate of Title (TCT) Nos. 239080 and 239081, respectively.[5] These properties were teeming with fruit-bearing trees such as durian, marang, lanzones, chico, rambutan, and coconut.

On April 5, 1995,[6] Catherine wrote the manager of DBP-Davao City to apply for an agricultural loan to fund a poultry grower project to be built on the subject properties, thus:

> Seven years ago, a friend of mine, Alan Ang, opened up a poultry farm as a grower for SWIFT starting with seventy[-]five thousand heads[,] and has been successfully growing broilers up to the present in Bulacan. Ever since the start of his project[,] he has been encouraging me to put up my own poultry farm here in Davao City. After careful consideration, study[,] and analysis based on the actual income successes of other growers before me, and who up to the present are harvesting successfully, I finally decided to follow their good and thriving examples.
>
> We have a thirty[-]six (36) hectare farm located at Barrio Bangkas Heights, Toril, Davao City just seventeen (17) kilometers away from downtown Davao and barely three (3) kilometers away from Toril proper whose road is asphalted all the way up to our property. **It is an area where fresh spring water abound and electricity has already reached. I have already chosen an ideal four (4) hectare site to install the specified houses to grow a starting number of twenty thousand (20,000) heads.** The inspectors and technicians of VITARICH have visited, studied[,] and approved the site as very ideal to put up the houses for broiler chickens that are very much in demand for public consumption.
>
> x x x x
>
> The only remaining link to turn all these into an actuality and profitable reality is for your bank to loan us the capital with a fair interest for the basic needs to start and push our project into its completion.
>
> We pray that with the aid of the Development Bank of the Philippines, we could work hand in hand to make our project succeed and grow and give inspiration and upliftment to our Filipino brothers and sisters who

[5] *Id*. at 17.

[6] *Id.*

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wish to follow the good examples we have set, for the betterment of our lives and our nation as a whole. (Emphasis added)

x x x x

In compliance with DBP's requirements, she submitted a feasibility study for the construction of four (4) poultry houses with a total broiler capacity of 20,000.[7] The broilers will be supplied by Vitarich.

Finding the feasibility study acceptable, DBP approved Catherine's ₱5,000,000.00 loan application which was secured by the subject properties. The loan agreement pertinently reads:

ARTICLE 2. AMOUNT AND TERMS OF THE LOAN

2.01 The Loan

During the Commitment Period, the Lender hereby agrees, upon the terms and conditions hereinafter set forth, to advance the commitment to the Borrower, and the Borrower hereby agrees to borrow from the Lender, the aggregate amount of the Commitment which shall not exceed the principal amount of FIVE MILLION PESOS (₱5,000,000.00), funded by SSS to finance [the] construction of poultry houses.[8]

2.02 Use of Loan Proceeds

The borrowers shall use the loan proceeds exclusively for the construction of poultry houses.

2.03 Procedure for Borrowing

The Borrower shall avail of the amount of the Commitment in one or more Drawdowns but always subject to the availability of funds on the agreed date of disbursement. Initial availment shall be subject to the fulfillment of all the conditions for Lending specified in Article 7.

x x x x

Article 7. CONDITIONS ON LENDING

1. Receipt of Promissory Note/s and Loan Agreement signed by borrowers.

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[7] *Id.*

[8] *Id.* at 131.

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2. Receipt of copies of duly executed, notarized and registered instruments covering or evidencing the Real Estate Mortgage.
3. Receipt of certification that financial information previously submitted to DBP is correct and that there are (sic) no undisclosed direct or contingent liability.
4. Receipt of certification of no adverse change from the latest financial statements and no default as a result of this drawdown.

x x x x

On November 15, 1995, Catherine issued a promissory note for ₱3,000,000.00 in favor of DBP[9] and received the first drawdown of ₱3,000,000.00 two (2) days later.[10] Using the first drawdown, Catherine was able to put up four (4) poultry houses, a *bodega*, and a water tank. She, too, was able to install poultry machineries, equipment, and a generator set.

Subsequently, by letter dated February 2, 1996, Catherine requested for the release of an additional ₱500,000.00, thus:

I am happy to inform your good office that the first drawdown which your office have (sic) released have all been spent for the poultry project.

To date, four (4) chicken houses with a capacity of five thousand (5,000) birds per house has (sic) been completed; as I promised in a letter addressed to you last October 5, 1995.

In erecting the four (4) chicken houses, I spent the amount of more than Five Million Pesos (₱5,000,000.00) and presently, I have credits which are due and must be paid.

I need another drawdown amounting to ₱500,000.00 only to pay my creditors on the materials I used for erecting the building. While it is noteworthy to point out that the ₱5,000,000.00 loan is not sufficient to finance all my projects, I am confident that with the additional structures that I am going to build, coupled by (sic) the ongoing price of chicken, I am assured of a profit and can pay my loans with your bank.

I have lined up eight (8) additional chicken houses to be financed by the additional drawdown or the final drawdown and the profit I get from the 20,000 birds covered by the four (4) houses.

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[9] *Id.* at 17.

[10] *Id.* at 150.

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The investment pays off every [forty-five] 45 days and I know I can make good in this business. Please release me only ₱500,000.00 to get my project moving so that I could immediately pay back your bank.

Meanwhile, please find below the actual expenses incurred to date.

x x x x

TOTAL PROJECT COST TO DATE . . . . . ₱9,470,964.00

Hoping for your usual kind consideration.

Very truly yours,

(Sgd.)
CATHERINE N. TOGLE[11]

But DBP denied the request because they (respondents) allegedly failed to comply with the loan specifications, *i.e.*, they should have infused equity in proportion to the amount released by DBP for the construction of twelve (12) poultry houses which could house at least 60,000 broilers.[12] This was the first time they were informed of these alleged requirements.[13]

After due notice,[14] DBP applied the acceleration clause and declared them in default. On November 22, 1996, DBP foreclosed the properties and emerged as the highest bidder at the auction sale. For their failure to redeem the properties, ownership thereof was consolidated to DBP. Consequently, the Register of Deeds of Davao City cancelled TCT Nos. 239080 and 239081 and issued TCT Nos. 300166 and 300167 in DBP's name.[15]

Thereafter, DBP stationed guards on the properties to prevent them (respondents) from harvesting the fruits and leasing out the farm.[16] DBP, too, removed the electrical wirings, electrical and

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[11] *Id*. at 141.

[12] *Id.* at 18.

[13] *Id.* at 151.

[14] *Id*. at 143-147.

[15] *Id.* at 18.

[16] *Id*. at 150.

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water pipes, iron bars, lights, and speakers from the structures thereon.

Believing that the acceleration of their loan was unwarranted, and the foreclosure of the mortgage was premature, respondents sought to annul the foreclosure proceedings and have the subject properties reconveyed in their favor. They, too, claimed moral damages of ₱10,000,000.00.

Meantime, Catherine was charged with violations of Batas Pambansa Blg. 22 (BP 22) and *estafa* by her unpaid suppliers, forcing her to leave Davao City. She eventually got arrested at her father's funeral.[17]

In its Answer with Counterclaim,[18] DBP riposted that it refused to release respondents' remaining credit because the latter failed to fulfill their end of the bargain. As agreed, the poultry project called for the construction of twelve (12) poultry houses for a total of ₱9,579,600.00. Of the said amount, ₱4,579,600.00 was respondent's equity while the other ₱5,000,000.00 would be covered by the loan. With its initial release of ₱3,000,000.00, DBP expected respondents to also infuse equity to be able to put up at least seven (7) poultry houses at the site. In other words, Catherine should have already infused equity of ₱2,747,760.00 to match the ₱3,000,000.00 loan released. As it was, however, only four (4) poultry houses were constructed which, per its appraiser's report, was only worth ₱3,193,200.00 or ₱2,554,559.00 short.[19]

Too, respondents failed to comply with the following additional conditions provided in the mortgage contract:[20]

> Drawdown/s on the ₱5,0MM (sic) - loan shall be made only after compliance with the following pre-release requirements and/or conditions:
>
> x x x x

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[17] *Id*. at 18.

[18] *Id.* at 19.

[19] Upon computation, the shortage should amount to ₱2,554,759. But the records uniformly used ₱2,554,559.00, *id*. at 18.

[20] CA Decision, *id.* at 83-84.

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8. Prior to final drawdown, the building shall at least be 90% complete and shall be declared for taxation purposes, the corresponding copy of the tax declaration shall be submitted to DBP;

9. Prior to final drawdown, the mortgagor shall execute an affidavit to the effect that there are no unpaid materials and labor used and/or employed during the construction of the building;

x x x x

11. Submission of an Environmental Clearance before the bank shall make final/full release on the loan.[21]

x x x x

Respondents' failure to infuse sufficient equity and put up the required number of poultry houses, coupled with their failure to submit the above documents, justified its refusal to release the remaining loan proceeds.

Ruling of the Trial Court

Under Decision[22] dated October 20, 2006, the trial court nullified DBP's foreclosure of the mortgaged properties and the consequent consolidation of DBP's ownership thereof, *viz.*:

WHEREFORE, judgment is rendered as follows:

1.a The real estate mortgage foreclosure and the consolidation of ownership of the lots are declared void.

1.b The defendants shall return TCT Nos. 300166 and 300167 to the plaintiffs.

1.c The Davao City Register of Deeds shall cancel TCT Nos. 300166 and 300167 and issue new titles in the names of the plaintiffs.

The defendant shall pay the plaintiffs the following sums:

2.a FIVE MILLION PESOS as moral damages.

2.b FIVE HUNDRED THOUSAND PESOS as attorney's fees.

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[21] *Id*. at 126.

[22] *Id*. at 149-159.

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2.c Costs of suit.

3. The defendant shall make an accounting of the income of the farm which they gathered from November, (sic) 1996 up to this time.

SO ORDERED.[23]

It essentially held that the foreclosure was premature as respondents were not yet in default. On the contrary, it was DBP which breached the loan agreement and acted in bad faith when it unilaterally altered its terms by requiring respondents to build twelve (12) poultry houses for 60,000 broilers instead of only four (4) poultry houses for 20,000 broilers.

DBP's motion for reconsideration got denied by Order[24] dated July 22, 2008.

Dispositions of the Court of Appeals

Through its assailed Decision[25] dated September 28, 2015, the Court of Appeals affirmed with modification, *viz.*:

WHEREFORE, the Decision dated October 20, 2006 of the Regional Trial Court, 11th Judicial Region, Branch 15, Davao City in Civil Case No. 27497-99 for Breach of Contract, Annulment of Mortgage & Foreclosure Proceedings & Reconveyance with Prayer for Preliminary Injunction and/or Temporary Restraining Order is AFFIRMED with MODIFICATION, to wit:

1. Declaring the foreclosure made by the defendant-appellant DBP on the plaintiffs-appellees' properties null and void and the certificate of titles issued in favor of the defendant-appellant DBP canceled and ordered reconveyed to the plaintiffs-appellees;

2. Ordering the defendant-appellant to render a full, accurate[,] and complete accounting of all the fruits and proceeds of the subject properties from November, (sic) 1996 up to this time, and to turn over the proceeds to the plaintiffs-appellees not later than three (3) months from the finality of this Decision.

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[23] *Id.* at 158.

[24] *Id.* at 20.

[25] *Id*. at 89-110.

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3. The plaintiffs-appellees are ordered to pay the defendant-appellant DBP the amount of Php3,000,000.00 including the stipulated interest payable not later than three (3) months from the finality of this Decision; and

4. The defendant-appellant is hereby ordered to pay the plaintiffs-appellees Togle (sic) the following:

a. Php500,000.00 as moral damages;
b. Php300,000.00 as exemplary damages;
c. Php3,713,200.00 as actual or compensatory damages;
[d]. Php500,000.00 as attorney's fees, all with interest at the rate of 6% per annum from the date of finality of this judgment. Costs against the defendant-appellant DBP.

SO ORDERED.[26]

According to the appellate court, it was DBP which breached the contract when it refused to release the additional loan proceeds of ₱500,000.00, thus:

x x x to deny the release of the remaining Php2,000,000.00 on the ground that Catherine had failed to put up 12 chicken houses to shelter 60,000 chickens is a clear breach of contract because **such condition is not imposed under the Loan Agreement. Any attempt to impose such condition is an alteration of the Loan Agreement and violative of the parol evidence rule**.[27] (Emphasis and underscoring added)

x x x x

Verily, it noted there was no stipulation in the loan agreement on the number of poultry houses to be built nor the number of broilers to be raised. To insist otherwise would violate the *parol* evidence rule. Thus, DBP had no right to refuse the release of the remaining loan amount. The trial court, therefore, did not err in nullifying the foreclosure proceeding and the resultant transfer of the properties to DBP's name.

Meanwhile, it awarded actual damages of ₱3,713,200.00 in respondents' favor, computed as follows:

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[26] *Id*. at 36-37.

[27] *Id*. at 95.

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₱3,193,200.00 - poultry houses;[28]
₱130,000.00 - the generator set;
₱140,000.00 - labor;
₱170,000.00 - portable machineries for cleaning; and
₱80,000.00 - *bodega*.[29]

It nevertheless reduced the awards of moral and exemplary damages to ₱500,000.00 and ₱300,000.00, respectively.

DBP's motion for reconsideration got denied by Resolution[30] dated March 17, 2016.

The Present Petition

DBP[31] now seeks affirmative relief from the Court, insisting it was respondents who breached the loan agreement. It maintains that the loan envisioned the construction of twelve (12) poultry houses which could accommodate 60,000 broilers. In fact, the feasibility study which Catherine submitted when she applied for the loan shows that the cost of four (4) poultry houses with a capacity for 20,000 broilers is ₱3,000,000.00. Obviously, it would not have approved the ₱5,000,000.00 loan if the total cost of the project was only ₱3,000,000.00.

Catherine was aware that the ₱5,000,000.00 loan demanded the construction of twelve (12) poultry houses. This is based on her own Letter dated February 2, 1996, addressed to DBP stating she lined up eight (8) additional chicken houses to be financed by the additional drawdown or the final drawdown and the profit from the 20,000 broilers covered by the four (4) poultry houses.

Too, Catherine should have already infused ₱2,747,760.00 in equity to match the ₱3,000,000.00 loan released for a total of ₱5,747,759.00.[32] As it was, however, the total valuation

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[28] Based on the appraiser's report, *id.* at 19.

[29] *Id.* at 31-32.

[30] *Id*. at 111-112.

[31] *Id.* at 61-88.

[32] Short of ₱1.00 per computation.

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of the project only amounted to ₱3,193,000.00, or short of ₱2,554,559.00.[33]

At any rate, respondents also failed to comply with other loan specifications and conditions in the mortgage contract, *i.e.*, submission of tax declaration, an affidavit stating there are no unpaid materials or labor, and Environmental Clearance Certificate (ECC). Hence, it validly withheld the additional ₱500,000.00 loan proceeds.

Respondents,[34] on the other hand, seek the immediate dismissal of the petition for its belated filing. They posited that DBP received the Resolution of the Court of Appeals denying reconsideration on March 30, 2016. Thus, DBP had until April 14, 2016, within which to file a petition for review on *certiorari*. But DBP sought a thirty (30)-day extension to file the petition on April 15, 2016 only or one (1) day late.[35] At any rate, the extension, if granted, was only until May 14, 2016, yet DBP filed it only on May 16, 2016 or two (2) days late. Consequently, the dispositions of the Court of Appeals had already become final.

In any event, the courts below did not err in ruling that they were not in default and, on the contrary, it was DBP which acted in bad faith. Had DBP released the loan proceeds in full, the poultry project would have been successful.

Our Ruling

The petition utterly lacks merit.

Preliminarily, the Court finds that DBP's motion for extension and petition for review on *certiorari* were timely filed. We give credence to the certification of Postmaster III Myrna C. Zaspa that letters with Registry Nos. **#RD606042813ZZ (Motion for Extension)**, #RD606042795ZZ, #RD606042800, and #RD60604287 were posted for mailing on **April 14, 2016**, though

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[33] Upon computation, the shortage should amount to ₱2,554,759. But the records uniformly used ₱2,554,559.00.

[34] *Rollo*, pp. 216-224.

[35] As shown in the envelope with Registered Mail RD 606042813, *id*. at 216.

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dispatched on April 15, 2016.[36] The motion sought a thirty (30)-day extension or until May 14, 2016, within which to file a petition for review on *certiorari*. But since May 14, 2016 fell on Saturday, DBP was justified in filing the petition on the next working day, May 16, 2016.[37]

We now resolve the case on the merits.

Notably, the issues raised—whether Catherine was in default and whether DBP acted in bad faith, are ultimately questions of fact. The Rules of Court, however, requires that only questions of law may be raised in petitions filed under Rule 45.[38] For settled is the rule that the Court is not a trier of facts. When the factual findings of the trial court are affirmed by the Court of Appeals, said facts are final and conclusive on this Court, unless the same are not supported by evidence on record.[39]

Here, the courts below uniformly found that DBP acted in bad faith, albeit for different reasons. On the one hand, the trial court found that DBP unilaterally altered the terms of the loan agreement and required respondents to build twelve (12) poultry houses for 60,000 broilers instead of only four (4) poultry houses for 20,000 broilers. On the other hand, the Court of Appeals held that there was no stipulation at all on the number of poultry houses to be built or the number of broilers to be raised. Despite these seemingly varied findings, however, one thing can be certain—respondents were not required to put up twelve (12) poultry houses for 60,000 broilers. Thus, respondents may not be deemed in default for their failure to comply with the purported condition.

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[36] *Id*. at 246.

[37] Rule 22, Section 1. *How to Compute Time.* — In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day. (2019 Proposed Amendments to the 1997 Rules of Civil Procedure, A.M. No. 19-10-20-SC (Resolution), October 15, 2019).

[38] See *Pascual v. Burgos*, 776 Phil. 167, 182 (2016).

[39] See *Bank of the Philippine Islands v. Leobrera*, 461 Phil. 461, 469 (2003).

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Consequently, the foreclosure proceeding was premature, and the sale of the subject properties in favor of DBP, void. On this score alone, the petition should be denied.

In any event, even if we review the factual findings anew, the same result would come out.

DBP had no valid reason to withhold the additional drawdown of ₱500,000.00

Where the language of a contract is plain and unambiguous, its meaning should be determined without reference to extrinsic facts or aids. The intention of the parties must be gathered from that language and from that language alone. Stated differently, where the language of a written contract is clear and unambiguous, the contract must be taken to mean that which, on its face, it purports to mean, unless some good reason can be assigned to show that the words used should be understood in a different sense.[40]

Here, it is undisputed that DBP committed to extend a ₱5,000,000.00 loan to respondents for the construction of poultry houses. In fact, DBP initially released ₱3,000,000.00 which Catherine used to build four (4) poultry houses for 20,000 broilers. As she needed the rest of the proceeds to further her business, she requested another drawdown of ₱500,000.00. To her shock, DBP denied her request.

DBP justified its refusal based on respondents' supposed failure to comply with the terms of the loan agreement. Specifically, respondents allegedly failed to put up the required equity for the construction of twelve (12) poultry houses for 60,000 broilers.

But as the Court of Appeals aptly noted, **the loan agreement**[41] **was silent on the specific number of poultry houses to be built, the number of broilers to be housed, and the equity to be infused by respondents**. To reiterate, the provisions of the loan agreement read:

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[40] See *Bautista v. Court of Appeals*, 379 Phil. 386, 399 (2000).

[41] *Rollo*, pp. 130-138.

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2.02 Use of Loan Proceeds

The borrowers shall use the loan proceeds exclusively **for the construction of poultry houses**.

2.03 Procedure for Borrowing

The Borrower shall avail of the amount of the Commitment in one or more Drawdowns but always subject to the availability of funds on the agreed date of disbursement. Initial availment shall be subject to the fulfillment of all the conditions for Lending specified in Article 7.

x x x x

Article 7. CONDITIONS ON LENDING

5. Receipt of Promissory Note/s and Loan Agreement signed by borrowers.

6. Receipt of copies of duly executed, notarized and registered instruments covering or evidencing the Real Estate Mortgage.

7. Receipt of certification that financial information previously submitted to DBP is correct and that there are (sic) no undisclosed direct or contingent liability.

8. Receipt of certification of no adverse change from the latest financial statements and no default as a result of this drawdown. (Emphasis supplied)

x x x x

Verily, the contract does not contain any stipulation regarding the construction of twelve (12) poultry houses for 60,000 broilers, or of any supposed equity requirement for that matter. DBP's counsel admitted as much during the trial, thus:

COURT: x x x I'm asking you if there is a letter by the defendant asking Vitarich, Mr. Vitarich, we want to increase our production from 20,000 to 60,000 chickens. Is there any document?

Atty. Carbiero: There's no document, your Honor, but the 60,000 chicks is (sic) the maximum amount for the defendant[s] to pay off their loan.

x x x x

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COURT: Do you have a copy of the contract?

Atty. Carbiero: Yes, Your Honor.

COURT: **What does it say? Is there any paragraph telling about the number of chicken[s]?**

Atty. Carbiero: **It does not specifically specify the number of chickens.**

COURT: **Was there any rider to the contract?**

Atty. Carbiero: **We have no rider, Your Honor.**

COURT: So, you are insisting that the contract provides for [twelve] 12 chicken houses?

Atty. Carbiero: [twelve] 12 poultry houses, Your Honor.[42] (Emphases supplied)

x x x x

Sans any condition imposed before respondents could avail of another drawdown from the loan, the inevitable conclusion is that respondents could draw from its credit line regardless of the number of poultry houses built or to be built, be it four (4), twelve (12), or even a hundred (100).

Respondents' supposed failure to comply with other loan specifications and conditions in the mortgage contract does not render them in default either. As worded, the "final drawdown" on the ₱5,000,000.00 could have only been made upon compliance with the enumerated additional requirements. Yet respondents were not seeking for the release of the entire balance of their credit line of ₱2,000,000.00; they were only requesting for the release of an additional ₱500,000.00. Surely, this request for additional funds cannot be considered the "final drawdown" contemplated in the mortgage contract.

In other words, DBP had no reason to withhold the release of the requested ₱500,000.00 loan proceeds. Corollarily, it had no reason to apply the acceleration clause in the loan agreement, declare respondents in default, and initiate the foreclosure proceedings of the subject properties.

[42] *Id.* at 96-97.

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Acceding to DBP's position would violate the parol evidence rule

DBP makes much ado of Catherine's Letter dated February 2, 1996 and claims that it is veritable proof that respondents committed to put up twelve (12) poultry farms.

This line of argument is untenable.

As stated, the release of loan proceeds in favor of respondents was not conditioned on the number of poultry houses built, nor on the equity respondents had infused.

At any rate, the introduction of Catherine's Letter dated February 2, 1996 in evidence is barred by the ***parol* evidence rule** which forbids any addition to or contradiction of the terms of a written instrument by evidence purporting to show that other or different terms were agreed upon by the parties. Section 10, Rule 130 of the 2019 Revised Rules on Evidence pertinently reads:

SECTION 10. *Evidence of Written Agreements.* — When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, as between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.

However, a party may present evidence to modify, explain or add to the terms of the written agreement if he or she puts in issue in a verified pleading:

(a) An intrinsic ambiguity, mistake or imperfection in the written agreement;
(b) The failure of the written agreement to express the true intent and agreement of the parties thereto;
(c) The validity of the written agreement; or
(d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.

The term "agreement" includes wills. (9a)[43]

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[43] 2019 Proposed Amendments to the Revised Rules on Evidence, A.M. No. 19-08-15-SC, August 10, 2019.

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Indeed, when an agreement has been reduced to writing, the parties cannot be permitted to adduce evidence to prove alleged practices which would alter the terms thereof. Whatever is not found in the writing is understood to have been waived and abandoned.[44]

In ***Ortañez v. Court of Appeals***,[45] private respondents refused to deliver the titles to the properties purchased by Ortañez for failure to cause the segregation of a right of way, put up a strong wall between the properties, and pay the capital gains tax among other expenses—conditions which were supposedly agreed upon by the parties.[46] The Court noted though that the deeds of sale covering the properties did not expressly contain these supposed conditions. Too, the deeds of sale were clear, without any ambiguity, mistake, or imperfection, much less obscurity or doubt in the terms thereof. Thus, they were deemed to contain all the terms agreed upon and no evidence of such terms can be admitted other than the contents thereof. Considering that the written deeds of sale were the only repositories of the truth, whatever were not found in said instruments were deemed waived and abandoned by the parties.

Similarly, the loan agreement here is clear—the loan proceeds were to be used for the construction of poultry houses without regard as to the number of poultry houses to be built, the number of broilers to be housed, and the amount of equity to be infused by the borrower. Thus, evidence of these supposed conditions cannot

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[44] See *Norton Resources and Development Corp. v. All Asia Bank Corp.*, 620 Phil. 381, 389-390 (2009).

[45] 334 Phil. 514-521 (1997).

[46] 3.3.2 Title to the other property (TCT No. 243273) remains with the defendants (private respondents) until plaintiff (petitioner) shows proof that all the following requirements have been met:

(i) Plaintiff will cause the segregation of his right of way amounting to 398 sq. m.;

(ii) Plaintiff will submit to the defendants the approved plan for the segregation;

(iii) Plaintiff will put up a strong wall between his property and that of defendants' lot to segregate his right of way;

(iv) Plaintiff will pay the capital gains tax and all other expenses that may be incurred by reason of sale. x x x, *id.* at 517.

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be admitted to alter the terms of the loan agreement. Otherwise stated, these conditions are deemed waived or otherwise abandoned.

To be sure, none of the exceptions to the *parol* evidence rule are present here. DBP did not put in issue the validity of the loan agreement, its intrinsic validity, nor allege any mistake or imperfection in the execution thereof. At best, DBP alleged that the loan agreement failed to express the existence of other terms and conditions agreed to by the parties. But even assuming this to be true, such circumstance should be taken against DBP, not respondents, since the loan agreement was a contract of adhesion which DBP itself prepared.

A **contract of adhesion** is one where a party imposes a ready-made contract which the other party may accept or reject, but not modify. One party prepares the stipulations in the contract, while the other party merely affixes his or her signature or his or her "adhesion" thereto, giving no room for negotiation and depriving the latter of the opportunity to bargain on equal footing.[47]

In ***Fortune Medicare, Inc. v. Amorin***,[48] the Court held that ambiguities found in a contract are interpreted against the party that caused the ambiguity. Any ambiguity in a contract whose terms are susceptible of different interpretations must be read against the party who drafted it[49] which, in this case, is DBP.

Another. A reading of Catherine's application letter dated April 5, 1995, shows that she requested for a ₱5,000,000.00 loan to finance a poultry project of 20,000 broilers. To reiterate:

> We have a thirty[-]six (36) hectare farm located at Barrio Bangkas Heights, Toril, Davao City just seventeen (17) kilometers away from downtown Davao and barely three (3) kilometers away from Toril proper whose road is asphalted all the way up to our property. It is an area where fresh spring water abound and electricity has already

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[47] Supra note 44 at 392.

[48] 729 Phil. 484-494 (2014).

[49] *Id.* at 494.

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reached. I have already chosen an ideal four (4) hectare site to install the specified houses to grow a starting number of **twenty thousand (20,000) heads**. The inspectors and technicians of VITARICH have visited, studied[,] and approved the site as very ideal to put up the houses for broiler chickens that are very much in demand for public consumption.[50] (Emphasis added)

x x x x

Meanwhile, Vitarich Area Manager Dr. Rey Apolo testified that an initial grower like Catherine would only be approved a grower's project for 20,000 broilers; only after gaining experience for at least one (1) year may a grower's project be increased to 60,000 broilers, thus:[51]

Q: And with respect to the 20,000 heads[,] you mentioned that there was a contract entered into between Catherin Togle and Vitarich Corporation?
A: Yes, sir.

Q: And to be housed in [four] 4 poultry houses?
A: Yes, sir.

Q: And what about the 60,000 heads[,] was there a contract entered into between Catherine Togle and Vitarich?
A: I really don't know because that time when Catherine Togle started to grow chicks with Vitarich, I was transferred to other area.

Q: So you were not aware if there was a contract for 60,000 heads?
A: Yes, sir.

Q: You have been supervising these growers['] subcontracts, in your experience as a first[-]timer, how many chicks should a first[-]timer [be] entitle[d] under your program?
A: For the first[-]timer, the ideal number is 5,000 to 10,000 to 20,000 birds.

Q: What about 60,000 chicks, would you suggest [a] contract project of 60,000?
A: Unless he or she already acquired experience for [one] 1 year.

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[50] *Id*. at 113.

[51] *Id.* at 98.

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Q: But in (sic) your knowledge, she has not yet obtained experience in [one] 1 year?
A: Yes, sir.

Q: So, under such situation, you would not recommend an execution of a contract with Vitarich?
A: Yes, sir.

x x x x

Q: In your experience Dr. Apolo, since you have been saying that [the] initial project of 20,000 chicks is ideal. Do you think that with that 20,000 chicks[,] would that be able to pay off a loan of ₱5 Million in 1995?
A: That can pay in 1995.[52]

x x x x

These circumstances militate against DBP's claim that respondents agreed to construct twelve (12) poultry houses. Indeed, even if we consider evidence other than what is written in the loan agreement as proof of the real terms thereof, the Court would still not automatically rule in DBP's favor. For the trial court may have been correct after all in ruling that the parties actually agreed to the construction of four (4) poultry houses. But even this was not written in the loan agreement. Thus, we sustain the finding of the Court of Appeals that based on the express terms of the loan agreement, the release of the loan proceeds was not conditioned on the construction of a specific number of poultry houses.

DBP's foreclosure of the real estate mortgage was premature

A mortgage, by its nature, is an accessory contract which may only be enforced when there has been a breach of the principal obligation. On the other hand, in reciprocal obligations such as a loan, a party may only be deemed in breach when the other has already fulfilled his or her obligation.[53]

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[52] *Id.*

[53] See *Development Bank of the Phils. v. Guariña Agricultural & Realty Development Corp.*, 724 Phil. 209, 221(2014).

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As established here, DBP withheld the additional loan proceeds of ₱500,000.00 without a valid reason. In other words, it failed to fulfill its obligation under the loan agreement. Consequently, it cannot compel respondents to fulfill their end of the bargain, hold them in default should they fail to comply, and foreclose their mortgaged property thereafter. In other words, the foreclosure proceedings was premature and the resultant sale and transfer of the subject properties, void.

The similar case of ***Development Bank of the Phils. v. Guariña Agricultural & Realty Development Corp.***[54] is *apropos*. There, Guariña Corporation applied for a loan of ₱3,387,000.00 with DBP to finance the development of its resort complex. Upon approval of its application, Guariña issued a promissory note and executed a real estate mortgage over several real properties in favor of DBP as security. The loan proceeds were then released in several installments. But when Guariña later sought another drawdown, DBP refused on the ground that Guariña supposedly failed to complete the required construction works. Thereafter, DBP declared Guariña in default and initiated extrajudicial foreclosure proceedings. But the Court held that DBP had no right to exact compliance from Guariña and declare the latter in default when it was DBP itself which failed to comply with its own obligation to release the proceeds of the loan in full, thus:

> x x x **by its failure to release the proceeds of the loan in their entirety, DBP had no right yet to exact on Guariña Corporation[,] the latter's compliance with its own obligation under the loan.** Indeed, if a party in a reciprocal contract like a loan does not perform its obligation, the other party cannot be obliged to perform what is expected of it while the other's obligation remains unfulfilled. In other words, the latter party does not incur delay.
>
> Still, DBP called upon Guariña Corporation to make good on the construction works pursuant to the acceleration clause written in the mortgage contract (*i.e.*, Stipulation No. 26), or else it would foreclose the mortgages.
>
> DBP's actuations were legally unfounded. It is true that loans are often secured by a mortgage constituted on real or personal property to

[54] *Id.*

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protect the creditor's interest in case of the default of the debtor. By its nature, however, a mortgage remains an accessory contract dependent on the principal obligation, such that enforcement of the mortgage contract will depend on whether or not there has been a violation of the principal obligation. **While a creditor and a debtor could regulate the order in which they should comply with their reciprocal obligations, it is presupposed that in a loan[,] the lender should perform its obligation—the release of the full loan amount—before it could demand that the borrower repay the loaned amount. In other words, Guariña Corporation would not incur in delay before DBP fully performed its reciprocal obligation.**

Considering that it had yet to release the entire proceeds of the loan, DBP could not yet make an effective demand for payment upon Guariña Corporation to perform its obligation under the loan. According to *Development Bank of the Philippines v. Licuanan*, it would only be when a demand to pay had been made and was subsequently refused that a borrower could be considered in default, and the lender could obtain the right to collect the debt or to foreclose the mortgage. Hence, Guariña Corporation would not be in default without the demand.

Assuming that DBP could already exact from the latter its compliance with the loan agreement, the letter dated February 27, 1978 that DBP sent would still not be regarded as a demand to render Guariña Corporation in default under the principal contract because DBP was only thereby requesting the latter "to put up the deficiency in the value of improvements."

Under the circumstances, DBP's foreclosure of the mortgage and the sale of the mortgaged properties at its instance were premature, and, therefore, void and ineffectual.[55] (Emphases added)

x x x x

Indeed, respondents here could not be deemed in delay. On the contrary, it was DBP itself which breached the loan agreement when it failed to release the additional loan proceeds of respondents. Worse, DBP acted in evident bad faith when it unilaterally amended the loan specifications and prescribed a

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[55] *Id.* at 221-222.

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number of poultry houses to be constructed, broilers to be raised, and equity to be infused.

All told, the courts below did not err in holding that the foreclosure of the mortgage was premature. Hence, the transfer of the subject properties to the name of DBP is void.

Monetary Awards

In view of the nullity of the foreclosure proceedings, it is but proper to reinstate respondents' titles to the subject properties.

Respondents must also be awarded damages for their loss of income since they were deprived of their right to harvest the fruits of their properties upon foreclosure on November 22, 1996. For this purpose, the DBP is ordered to render full and complete accounting of the income from the subject properties from foreclosure until turnover of the property to respondents.

We nevertheless modify the award of actual damages of ₱3,713,200.00. For perspective, respondents put up four (4) poultry houses on the subject properties and installed farming equipment, a water tank, and *bodega* thereon. During the trial, it was established that the equipment and other improvements in the poultry houses were removed by DBP. But there was no mention at all on what happened to the poultry houses themselves, whether they were demolished or remained viable for operation.

The only thing certain is that the appraised value of the project at the time of foreclosure was ₱3,193,200.00. Thus, there is a need to determine the *current* value of the four (4) poultry houses on the subject properties. Thereafter, the difference between the appraised value of ₱3,193,200.00 and the current value of the structures will be awarded to respondents as additional damages.

This is only fair considering the length of time this case had protracted, twenty-five (25) years from foreclosure on November 22, 1996. During this entire period, respondents were not able to use the poultry houses for their intended purpose. Thus, respondents ought to be recompensed for the loss and depreciation of the improvements on the properties during the time they were not in possession thereof. In order to arrive at the correct figure,

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however, the case must be remanded to the trial court for proper appraisal.

As for the awards of moral and exemplary damages, the same are in order.

Moral damages may be recovered in *culpa contractual* where the defendant is shown to have acted in bad faith or with malice in the breach of the contract.[56] Article 2220 pertinently states:

> **ARTICLE 2220.** Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. **The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.**[57] (Emphasis added)

As earlier established, DBP unilaterally amended the loan contract and made it appear that respondents violated these additional terms in order to justify its refusal to release loan proceeds in their favor. This blatant departure from the clear and unequivocal terms of the loan contract reeked of bad faith as DBP subsequently invoked the supposed violation to declare respondents in default, apply the acceleration clause to their debt, and foreclose the subject property, all without legal basis. Undoubtedly, DBP's actions caused respondents' poultry business to fail. Without the release of the corresponding loan proceeds from DBP, respondents were unable to pay their suppliers, prompting the latter to file criminal cases against Catherine for violation of BP 22 and *estafa* which culminated in her arrest during her father's funeral.

On the other hand, exemplary or corrective damages are imposed by way of example or correction for the public good. In contracts, the court may award exemplary damages if the defendant acted in wanton, fraudulent, reckless, oppressive or malevolent manner,[58] thus:

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[56] See *Far East Bank and Trust Co. v. Court of Appeals*, 311 Phil. 783, 787 (1995).

[57] Civil Code of the Philippines, Republic Act No. 386, June 18, 1949.

[58] See *Munsayac v. De Lara*, 132 Phil. 534, 535 (1968).

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ARTICLE 2232. In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive or malevolent manner.

x x x x

ARTICLE 2234. While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. In case liquidated damages have been agreed upon, although no proof of loss is necessary in order that such liquidated damages may be recovered, nevertheless, before the court may consider the question of granting exemplary in addition to the liquidated damages, the plaintiff must show that he would be entitled to moral, temperate or compensatory damages were it not for the stipulation for liquidated damages.[59]

Here, Catherine, then beaming with hope over her newly established business venture suddenly found herself in an utterly distressful situation—as a detainee charged with multiple criminal cases for violation of BP 22 and *estafa*, mainly not of her own doing but because of DBP's unfair dealing with her. Thus, to deter DBP from dealing with its clients the way it did with Catherine and her mother, the Court deems it proper to award exemplary damages in respondents' favor. As we have decreed in ***Dela Cruz v. Octaviano***:[60]

Also known as "punitive" or "vindictive" damages, exemplary[,] or corrective damages are intended to serve as a deterrent to serious wrongdoings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct. These terms are generally, but not always, used interchangeably. In common law, there is preference in the use of exemplary damages when the award is to account for injury to feelings and for the sense of indignity and humiliation suffered by a person as a result of an injury that has been maliciously and wantonly inflicted, the theory being that there should be compensation for the hurt caused by the highly reprehensible conduct of the defendant—associated with such circumstances as willfulness, wantonness, malice, gross negligence[,] or

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[59] Civil Code of the Philippines, Republic Act No. 386, June 18, 1949.

[60] 814 Phil. 891, 912 (2017).

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recklessness, oppression, insult or fraud, or gross fraud—that intensifies the injury. The terms punitive or vindictive damages are often used to refer to those species of damages that may be awarded against a person to punish him [or her] for his [or her] outrageous conduct. In either case, these damages are intended in good measure to deter the wrongdoer and others like him [or her] from similar conduct in the future.

x x x x

The Court, nevertheless, reduces the award of moral damages from ₱500,000.00 to ₱300,000.00, and exemplary damages from ₱300,000.00 to ₱200,000.00, both in accordance with ***Trans World Airlines v. Court of Appeals***.[61]

Attorney's fees should also be awarded. Article 2208[62] of the Civil Code ordains that in the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except when exemplary damages are awarded, as here.

Here, the award of exemplary damages supports the award of attorney's fees as respondents were compelled to litigate to recover their property and to protect their interests. To add, Catherine was subjected to numerous legal battles including criminal charges all because of DBP's unwarranted refusal to release additional loan proceeds. Considering DBP's apparent bad faith in dealing with respondents, the Court of Appeals correctly awarded attorney's fees, albeit at the reduced amount of ₱100,000.00 consistent with ***PNB v. Spouses Tajonera***.[63]

Finally, although DBP erroneously declared respondents in default, respondents must nevertheless pay DBP the loaned amount of ₱3,000,000.00, lest there be unjust enrichment. This amount will only become due, however, when the exact amount

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[61] See *Trans World Airlines v. Court of Appeals*, 247-A Phil. 235 (1988).

[62] Civil Code of the Philippines, Republic Act No. 386, June 18, 1949.
Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
(1) When exemplary damages are awarded; x x x.

[63] 744 Phil. 127, 135 (2014).

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of actual damages respondents are entitled to is finally fixed. This is to allow the compensation of the amounts due.

ACCORDINGLY, the petition is **DENIED**. The Decision dated September 28, 2015 and Resolution dated March 17, 2016 of the Court of Appeals in CA-G.R. CV No. 01726 are **AFFIRMED with MODIFICATION**:

1. The foreclosure of the properties subject of mortgage is **DECLARED VOID**;

2. The Register of Deeds of Davao City is **ORDERED** to **CANCEL** TCT Nos. 300166 and 300167 issued in favor of Development Bank of the Philippines and **REINSTATE** TCT Nos. 239080 and 239081 in the name of respondents;

3. The Development Bank of the Philippines is **ORDERED** to **PAY** respondents the following:

   a. **Moral Damages** of ₱300,000.00;
   b. **Exemplary Damages** of ₱200,000.00; and
   c. **Attorney's Fees** of ₱100,000.00.

   These awards shall earn six percent (6%) legal interest *per annum* from finality of this Decision until fully paid.[64]

4. The case is **REMANDED** to the Regional Trial Court-Branch 15, Davao City for the purpose of determining the **actual damages suffered by respondents, including loss of income**. For this purpose, the Development Bank of the Philippines is **ORDERED** to **IMMEDIATELY RENDER** full, accurate, and complete **ACCOUNTING** of the income it may have derived from the subject properties, if any, from November 22, 1996 until the turnover of the subject properties to respondents;

5. Respondent **Evelina Togle** and **Catherine Geraldine Togle** are **ORDERED** to **PAY** the loan of ₱3,000,000.00 to the Development Bank of the Philippines. This amount will only become due, however, once the award

[64] See *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013).

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of damages in the preceding paragraph (4) is fixed with finality; and

6. Once the amount of damages in paragraph four (4) shall have been fixed and offset against paragraph five (5), the net amount shall earn legal interest of six percent (6%) *per annum* until fully paid.[65]

In view of the long years, this case has been pending since it got filed on August 23, 1999, the Regional Trial Court-Branch 15, Davao City is **DIRECTED** to **RESOLVE** the matters under paragraph four (4) hereof with **UTMOST DISPATCH**.

SO ORDERED.

Gesmundo, C.J. (Chairperson), Caguioa, M. Lopez, and *J. Lopez, JJ.*, concur.

APPEARANCES OF COUNSEL

DBP Legal Services Group for petitioner.
Torres Caparas Law Offices and *Abelardo B. Albis, Jr.* for respondents.

[65] *Id.*