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SECOND DIVISION

[G.R. No. 199565; June 30, 2021]

HONGKONG AND SHANGHAI BANKING CORP. (HSBC), LTD. STAFF RETIREMENT PLAN (now incorporated as HSBC RETIREMENT TRUST FUND, INC.) and MANUEL ESTACION, *Petitioners*, *v.* **SPOUSES JUAN I. GALANG AND MA. THERESA OFELIA G. GALANG,** *Respondents*.

[G.R. No. 199635; June 30, 2021]

HONGKONG AND SHANGHAI BANKING CORP. (HSBC), LTD., *Petitioner*, *v.* **SPOUSES JUAN I. GALANG AND MA. THERESA OFELIA G. GALANG,** *Respondents*.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Cases

These consolidated petitions seek to reverse and set aside the following dispositions of the Court of Appeals in CA-G.R. CV No. 90491 entitled *Spouses Juan I. Galang and Ma. Theresa Ofelia G. Galang v. Hongkong and Shanghai Banking Corporation, Ltd., Manuel S. Estacion, as rep. by Atty. Manuel Montecillo, Stuart Milne, and Alejandro Custodio, Atty. Grace S. Belvis and Sofronio M. Villarin, in their capacity as Clerk of Court/Ex-Officio Sheriff and Sheriff in Charge of the Regional Trial Court of Pasig, Defendants, Hongkong and Shanghai Banking Corporation, Ltd., and HSBC Staff Retirement Fund, Inc. (Formerly Hongkong and Shanghai Banking Corp., Ltd. Staff Retirement Plan)*:

1. Decision[1] dated March 31, 2011 nullifying the foreclosure of mortgage of Spouses Galang; and

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[1] Penned by Court of Appeals Associate Justice (now a member of the Supreme Court) Mario V. Lopez, with Associate Justices Magdangal de Leon and Edwin Sorongon, concurring.

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2. Resolution[2] dated December 6, 2011 denying reconsideration;

Antecedents

Respondent Ma. Theresa Ofelia G. Galang was a regular employee of petitioner Hongkong and Shanghai Banking Corporation, Ltd. (HSBC), a foreign banking institution duly licensed to do business in the Philippines.[3] HSBC offered benefit plans for its employees, including housing loans, administered and managed by Hongkong and Shanghai Banking Corporation, Ltd. Staff Retirement Plan (HSBC-SRP).[4]

On March 1, 1990, Ma. Theresa applied for a ₱400,000.00 housing loan, payable monthly for twenty-five (25) years at six percent (6%) interest *per annum*. HSBC-SRP approved the loan. The monthly amortizations were then paid through deductions from Ma. Theresa's payroll account. The loan was secured by a mortgage she and her husband petitioner Juan I. Galang executed on their property in Mandaluyong City in favor of HSBC-SRP. The property is covered by TCT No. 3340.

Notably, the HSBC Retirement Plan Rules and Regulations provide that the loan may be accelerated in case of separation, *viz.*:

Article VII

x x x Regardless of the Employees, (sic) length of service to the Bank, an employee who is **separated from the service of the Bank for cause** or any other act for which the bank suffers loss or damages[,] **shall lose all his rights to the benefits provided under the Plan**.

x x x x

Article IX

x x x x

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[2] G.R. No. 199635, *rollo*, pp. 54-59.

[3] *Id.* at 60.

[4] HSBC-SRP had not yet been duly incorporated at the time the original case for annulment of foreclosure sale with damages and preliminary injunction was filed on December 20, 1996; *id.* at 60-61.

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Section 5.

x x x Should the Employee's service with the Bank be **terminated prior to full repayment of the loan, the Employee shall make a single payment to cover the outstanding balance**." (Emphases and underscoring supplied).[5]

On the other hand, pertinent provisions of the Mortgage Agreement, read:

The BOARD OF TRUSTEES, the body duly authorized to act for and on behalf of the HSBC RETIREMENT FUND, a trust fund established in accordance with law by the Hongkong and Shanghai Banking Corporation to finance the HSBC Retirement Plan with postal address at P.O. Box No. 1299, Makati, Commercial Centre, Municipality of Makati, Metro Manila, and herein after referred to as the "MORTGAGEE,"

---and---

SPOUSES MA. THERESA OFELIA G. GALANG & JUAN I. GALANG both of legal age, Filipino and resident of 52 A. Pinagtipunan, Mandaluyong, Metro Manila, hereinafter referred to as the "MORTGAGOR(S)."

W I T N E S S E T H

WHEREAS, the MORTGAGOR(S) has/have applied to the MORTGAGEE for certain credit or credit facilities and the MORTGAGEE has agreed to grant said credit or credit facilities, under the express terms and conditions set forth hereinafter:

NOW, THEREFORE, in consideration of the premises, and of the mutual premises, convenants (sic) and stipulations herein contained, the parties hereto have agreed, and do agree, the one with the other or others, as follows:

I.

The MORTGAGEE hereby grants to the MORTGAGOR(S) a credit or credit facilities consisting of – a loan of PESOS: FOUR HUNDRED THOUSAND ONLY (₱400,000.-) Philippine Currency payable on demand.

x x x x

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[5] *Id.* at 30.

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III.

THE MORTGAGOR(S) hereby undertake(s) and agree(s) to pay the MORTGAGEE, upon demand, any and all sums that may be or become due from and owing by the MORTGAGOR(S) to said MORTGAGEE, under and in virtue of the credit or credit facilities hereby granted or hereinafter to be granted by the latter to the former together with the interest thereon at the rate computed in the manner set out in Article II hereof.

x x x x

VI.

x x x II. In the event that the MORTGAGOR(S) should fail to pay the sums of money secured by this mortgage, or any part thereof in accordance with the terms and conditions herein set forth, or should the MORTGAGOR(S) fail to perform any of the conditions stipulated herein, then and in that case, the MORTGAGEE shall have the right, at his election to foreclose this mortgage and sell the mortgaged property extrajudicially, in the manner hereinafter in this paragraph set forth; and for such purpose the MORTGAGEE is hereby appointed the attorney-in-fact of the MORTGAGOR(S), with full power of substitution and revocation[6] x x x.

In January 1993, a labor dispute broke out between HSBC and Hongkong and Shanghai Baking Corporation Employees Union (HSBC-EU), the union of rank-and-file employees of which Ma. Theresa was a member.[7] On December 22, 1993, the tension climaxed into a full-blown strike, prompting HSBC to dismiss ninety percent (90%) of its rank-and-file employees, including Ma. Theresa.[8] Dropped from the payroll, Ma. Theresa was unable to pay the monthly loan amortizations from January to November 1994.[9]

On November 28, 1994, HSBC-SRP sent Spouses Galang a formal demand for full payment of the loan. Spouses Galang,

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[6] G.R. No. 199565, *rollo*, pp. 50-52.

[7] G.R. No. 199635, *rollo*, p. 31.

[8] *Id.*

[9] *Id.*

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however, paid only their arrears and resumed remitting their monthly amortizations in December 1994 when they were able to raise enough money. They had since religiously paid their monthly amortizations until October 1996.[10]

In the interim, HSBC-SRP sent them Installment Overdue Reminders dated December 13, 1994, informing them of their total outstanding balance of ₱338,636.00, which includes their overdue amounts of interest, monthly amortizations, and the interest on the arrears.[11] HSBC-SRP, too, sent demand letters on September 25, 1995 and July 19, 1996 for payment of the entire balance, which allegedly amounted to ₱313,290.00[12] and ₱347,367.02, respectively.[13] It also threatened to foreclose the mortgaged property unless the loan is paid in full.[14]

In response, Ma. Theresa sent HSBC-SRP a letter dated September 2, 1996, explaining that her account was up-to-date as she and her husband had paid the arrears and since December 1994, and they had been paying their monthly amortizations regularly.[15]

HSBC-SRP, however, sent Spouses Galang yet another Installment Overdue Reminders on September 11, 1996 regarding their overdue account which then totaled ₱295,948,000. A month later, October 10, 1996, HSBC-SRP extrajudicially foreclosed the mortgage for ₱324,119.59 which covered the outstanding balance of the housing loan then at ₱294,614.00.[16] Petitioner Manuel Estacion, Vice President of HSBC and former trustee of HSBC-SRP emerged as the highest bidder.[17]

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[10] G.R. No. 199565, *rollo*, p. 115.

[11] *Id.* at 116.

[12] G.R. No. 199635, *rollo*, p. 39.

[13] G.R. No. 199565, *rollo*, p. 117.

[14] *Id.* at 31.

[15] *Id.* at 118.

[16] *Id.*

[17] G.R. No. 199635, *rollo*, p. 32.

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On December 20, 1996, Spouses Galang sued HSBC and HSBC-SRP for *Annulment of Sale with Damages and Preliminary Injunction* before the Regional Trial Court (RTC)-Pasig City. The case was docketed Civil Case No. 66057 and raffled to Branch 68.[18]

On April 30, 1997, the trial court issued a writ of injunction, restraining petitioners and the Clerk of Court and Sheriff of RTC, Pasig City from registering the Certificate of Sale or from executing and registering a Final Deed of Sale and/or other documents with the Register of Deeds. They were also restrained from taking any action that would cancel registration of TCT No. 3340 under the name of Spouses Galang and consolidating ownership in favor of anyone else.[19]

In its answer, HSBC-SRP asserted that the complaint stated no cause of action. For based on the HSBC Retirement Plan Rules and Regulations, upon termination of Ma. Theresa's employment with HSBC, her loan balance automatically became due and demandable. Since she failed to settle this amount in full upon demand, foreclosure of her mortgage logically followed.[20]

As for HSBC, it also sought to dismiss the case on the ground that it was not a privy to the real estate mortgage contract between Spouses Galang and HSBC-SRP, a different and separate entity from HSBC itself. In any event, its relationship with Ma. Theresa was purely one of employer-employee – no other.[21]

During the pre-trial, the parties stipulated *inter alia*, that HSBC-SRP is managed by the Board of Trustees appointed solely by HSBC's Board of Directors; HSBC was not a signatory to any contract entered into and executed between Spouses Galang and HSBC-SRP; Ma. Theresa availed of the benefits offered by HSBC to its employees; in connection with the loan, Ma. Theresa

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[18] *Id.*

[19] G.R. No. 199565, *rollo*, p. 56.

[20] G.R. No. 199635, *rollo*, p. 32.

[21] *Id.*

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accomplished the corresponding application and executed a Mortgage Agreement on the property in favor of HSBC-SRP; and HSBC-SRP has its own policies, as defined in the HSBC Retirement Plan Rules and Regulations.[22]

During the main trial, **Ma. Theresa** testified that while the labor dispute between HSBC and the rank-and-file employees was pending compulsory arbitration, HSBC agreed to restructure the loans of some striking employees.[23]

Meanwhile, HSBC Vice-President **Manuel Estacion** testified that he acted as a Trustee for HSBC-SRP. He clarified that HSBC-SRP was not involved in the labor dispute between HSBC and its employees; HSBC-SRP had no staff of its own, but had HSBC employees carry out its functions.[24]

The foreclosure was a necessary consequence of Ma. Theresa's failure to pay her amortizations in 1994 and was done in the regular course of business. Although Ma. Theresa resumed her amortization payments, the same were not enough to cover the full outstanding balance of her loan that had already become due and demandable.[25] On cross, he admitted that HSBC accepted Ma. Theresa's payments but claimed that this was merely due to oversight. He, too, admitted that HSBC-SRP got incorporated and registered with the Securities and Exchange Commission (SEC) only after the mortgage on the property of Spouses Galang already got foreclosed.[26]

HSBC Manager for Labor Relations **Nilo Antonio J. Dicen** corroborated Estacion's testimony. He added that he joined HSBC-SRP in 1998 when it got incorporated; the other incorporators were also officers of HSBC. He noted that Ma.

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[22] *Id.* at 65-67.

[23] *Id.* at 67.

[24] *Id.*

[25] *Id.*

[26] *Id.* at 68.

Theresa was terminated by HSBC even before the strike was declared illegal by the Department of Labor and Employment.[27]

Finally, HSBC Assistant Vice President for Credit Control **Ma. Gina A. De Guzman** testified that she was in charge of the release of funds for loans, payment collections, and security documentations; the mortgage on Ma. Theresa's property got foreclosed in October 1996 due to her separation from HSBC; when a staff resigns, retires, or is terminated, his/her loans become due and demandable; the loans of some of the striking employees were restructured; and Ma. Theresa was up-to-date in her monthly payments when HSBC-SRP foreclosed the mortgage on her property.[28]

The Ruling of the Trial Court

By Decision[29] dated July 24, 2004 the trial court disposed of the case, thus:

> Quite obviously there is an apparent discrepancy between the plan's rules and regulations and the mortgage contract. But the Court's hand, so to speak, is tied up from appreciating the plan's rules and regulations because the matter of the plaintiff wife's dismissal is still *sub judice*. For this Court therefore to appreciate the regularity or irregularity of the dismissal would be a clear preemption of the higher court's resolution on the matter. And besides even if the Court could venture for a reconciliation of the said documents, the discrepancy would still have to be resolved in favor of the plaintiff's (sic) in line with the axiomatic precept of interpretation that doubts are resolved against the party that caused the doubt.
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> In view thereof, the Court is thus left with only the mortgage contract in determining if the foreclosure of the mortgage in question is in order or not. It is, however, not difficult to see that the foreclosure of the mortgage is highly irregular for the simple reason that plaintiffs were up to date in their monthly payments. Foreclosure only appears in case of arrear and default, which under the mortgage contract are wanting.

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[27] *Id.*

[28] *Id.*

[29] Penned by Judge Santiago G. Estrella; *id.* at 60-72.

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And yet, despite the above observation of the court, still the Court could not make a definitive adjudication on this case inasmuch as the dismissal issue between the parties remain unresolved. The court reckons that if the dismissal issue is decided in plaintiff wife's favor, then perhaps the illegality of the foreclosure would have been then clearly shown for the plan's rules will not come into play. However, it is not far-fetched that the decision may also be adverse to them. But by then preference of priority shall then be the issue between the two documents, which incidentally is not raised as an issue in this case.

In fine, the Court feels that the determination of whether or not the foreclosure of mortgage subject of this case should be annulled is premature. It therefore could not be sustained. On the other hand, the Court could not likewise sustain the counterclaims for damages of the defendants for the supposed litigation expenses for this case as the plaintiffs were merely impelled in filing this case for their legitimate exercise of property right protection.

WHEREFORE, in view of all the foregoing, the Court resolves to DISMISS this case for reason of prematurity. However, in the interest of justice and fair play, the Court resolves not to dissolve [sic] the Temporary Restraining Order until the issues between the parties shall have been finally decided.

No pronouncement as to costs.

SO ORDERED.[30]

It emphasized that the parties failed to show the supposed interplay between the HSBC Retirement Plan Rules and Regulations, on one hand and the mortgage contract, on the other. The court opined that each is separate and distinct from the other.[31] Thus, under the mortgage agreement, the entire obligation becomes due and demandable when the mortgagor defaults and fails to pay despite demand. In contrast, under the HSBC Retirement Plan Rules and Regulations, the entire obligation is accelerated upon the severance from employment of the employee-mortgagor.[32] Although the court recognized the need to reconcile

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[30] *Id.* at 71-72.

[31] *Id.* at 69.

[32] *Id.* at 69-70.

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these two (2) apparently conflicting sources of the parties' rights and obligations, it declined to pass upon the issue in view of what it perceived is a prejudicial question to the issue of default, to wit: the validity or invalidity of the termination of Ma. Theresa then pending before the Court.[33] Hence, the court dismissed the complaint for being supposedly premature.

Proceedings before the Court of Appeals

HSBC, HSBC-SRP together with Estacion, and Spouses Galang filed their respective appeals.[34]

HSBC-SRP and Estacion faulted the trial court for not finding that HSBC-SRP had the right to foreclose the mortgage on the subject property.[35] They maintained that although Spouses Galang were able to update their account, the same did not prevent the foreclosure of mortgage.[36] Too, the issue affecting the validity or invalidity of Ma. Theresa's termination did not bear on the right of HSBC-SRP to foreclose.[37]

As for HSBC,[38] it faulted the trial court for not dismissing the complaint against it despite the patent absence of any showing on record that it participated in the transaction or even in the subsequent foreclosure proceedings between Spouses Galang and HSBC-SRP.

For their part, Spouses Galang faulted the trial court for dismissing the complaint on the supposed ground that it was premature and for not holding petitioners liable for damages.[39] They argued anew that since they had been religiously paying their monthly amortizations, they could not be declared in default,

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[33] *Id.* at 70.

[34] G.R. No. 199565, *rollo*, pp. 66-85.

[35] *Id.* at 73-75.

[36] *Id.* at 75-80.

[37] *Id.* at 80-82.

[38] *Id.* at 75-94.

[39] *Id.* at 109-130.

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much less, could the mortgage on their property be foreclosed. More so since the resolution of the issue of default here depended on the validity or invalidity of the termination of Ma. Theresa then pending before the Supreme Court.

The Decision of the Court of Appeals

By Decision[40] dated March 31, 2011, the Court of Appeals ruled in favor of Spouses Galang, declaring as void the foreclosure of mortgage on their property, *viz.*:

> **WHEREFORE**, the extrajudicial foreclosure of the mortgage is declared **VOID** and the claims for damages and attorney's fees by the parties are **DENIED**.
>
> **SO ORDERED**.[41]

For one, HSBC could not invoke lack of privity in the mortgage contracts to escape liability under the complaint. **First**, it created HSBC-SRP tasked with administering retirement, pension, and other plans for the benefit of its employees; **second**, when the loan agreement and the real estate mortgage were executed in 1990, HSBC-SRP was still directly attached to HSBC as the former was only incorporated in 1998; **third**, HSBC appointed the trustees to manage HSBC-SRP; and **finally**, HSBC's assets, liabilities, or other interests were transferred to HSBC-SRP. For all intents and purposes, HSBC-SRP was a mere conduit of HSBC which is the real party in interest. To be sure, the foreclosure proceedings were predicated on the loan and mortgage contracts executed between Ma. Theresa and HSBC, through HSBC-SRP. In sum, it was HSBC which stood to benefit from the foreclosure.[42]

For another, the illegal dismissal case against Ma. Theresa was still pending when the mortgage was foreclosed. Thus,

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[40] Penned by Court of Appeals Associate Justice (now a member of the Supreme Court) Mario V. Lopez, with Associate Justices Magdangal de Leon and Edwin Sorongon, concurring.

[41] CA Decision, p. 13.

[42] *Id.* at 8.

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her employment with HSBC could not have been considered as "terminated with cause" which could have obligated her to immediately pay the entire balance of her loan. More, Ma. Theresa's failure to pay her amortizations from January to November 1994 did not justify the foreclosure. For foreclosure is only proper when the debtor is in default after demand has been made. Here, after HSBC-SRP sent its demand letter on November 28, 1994, Ma. Theresa promptly paid the arrears and regularly paid the succeeding monthly amortizations as well until October 1996 – which HSBC and HSBC-SRP accepted.[43]

As for the claim for damages and attorney's fees, the Court of Appeals found no basis to grant them. Before moral damages may be awarded, the claimant must first allege and prove moral suffering, mental anguish, and the like. Unfortunately for Spouses Galang, they offered no proof of "mental anguish, sleepless nights, besmirched reputation, and embarrassment." Consequently, they cannot be entitled to exemplary damages, either.[44]

The Court of Appeals denied reconsideration on December 6, 2011.[45]

The Present Petitions

Through their respective petitions for review on certiorari, HSBC-SRP and Manuel Estacion in G.R. No. 199565, and HSBC in G.R. No. 199635 now seek affirmative relief against the foregoing dispositions of the Court of Appeals.[46]

G.R. No. 199565: *Petition for Review of HSBC-SRP and Manuel Estacion*

HSBC-SRP and Estacion assert that Ma. Theresa was able to apply for the loan by reason of her employment with HSBC. Her eligibility for the loan was predicated on her status as a regular employee. Too, she was well aware of the terms of the HSBC

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[43] *Id.* at 10-12.

[44] *Id.* at 12-13.

[45] G.R. No. 199635, *rollo*, pp. 54-59.

[46] G.R. No. 199565, *rollo*, pp. 8-23; and G.R. No. 199635, *rollo*, pp. 9-32.

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Retirement Plan Rules and Regulations which expressly provide that should her service with HSBC be terminated, she loses the benefit, and her loan, gets accelerated.

They also cite Article VI-H of the Mortgage Agreement, thus:

> H. In the event that the MORTGAGOR(S) should fail to pay the sums of money secured by this mortgage, or any part thereof in accordance with the terms and conditions herein set forth, or should the MORTGAGOR(S) fail to perform any of the conditions stipulated herein, then and in that case, the MORTGAGEE shall have the right, at his election to foreclose this mortgage and sell the mortgaged property extrajudicially, in the manner hereinafter in this paragraph set forth; and for such purpose the MORTGAGEE is hereby appointed the attorney-in-fact of the MORTGAGOR(S), with full power of substitution and revocation: x x x (Underscoring provided)

They emphasize anew that failure to pay any of the sums secured by the mortgage or failure to comply with the conditions of the Mortgage Agreement already constitutes a valid ground to foreclose the mortgage. Spouses Galang had admitted their failure to pay their monthly amortizations in 1994. Consequently, the right of HSBC-SRP to foreclose the mortgage on the subject property automatically accrued. The fact that they subsequently paid their arrears and monthly amortizations did not cure the default already incurred by them under the Mortgage Agreement.[47]

Further, the validity or invalidity of the termination of Ma. Theresa's employment does not bear upon the joint civil obligation of Ma. Theresa and her husband to HSBC-SRP which was not even a party to the labor dispute.[48] In ***Nestle Philippines, Inc. v. NLRC***[49] and ***NDC Guthrie Plantations v. NLRC***,[50] the Court consistently ruled that enforcement of a loan agreement involves debtor-creditor relations founded on a contract, which does not,

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[47] G.R. No. 199565, *rollo*, pp. 15-17.

[48] *Id.* at 17-22.

[49] 272-A Phil. 305, 309 (1991).

[50] 414 Phil. 714, 726 (2001).

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in any way, concern employer-employee relations.[51] Hence, the pendency of the illegal dismissal case of Ma. Theresa should not affect her separation *per se* from HSBC and its effect on her loan with HSBC-SRP.

The Court of Appeals ignored the relevant rulings of the Court in ***HSBC Ltd. Staff Retirement Plan (now HSBC Retirement Trust Fund, Inc.) v. Spouses Broqueza***[52] and ***Spouses Tamonte v. HSBC Ltd., et al.***[53] Both involved co-employees of Ma. Theresa who were also separated from HSBC because of their participation in the same illegal strike. When these employees defaulted on their respective loans, HSBC-SRP also sought to collect payments, albeit they, too, raised the defense that the HSBC-SRP cannot exercise the right to collect and/or foreclose their mortgages in view of the pending illegal dismissal case. In ***Broqueza***, the Court ruled that a loan agreement *involves a debtor-creditor relation* which *does not in any way concern employee relations*.[54] Meanwhile, in ***Tamonte***, the Court dismissed a similar complaint for annulment of foreclosure proceedings filed by therein petitioners.[55]

The principle of estoppel does not apply here as none of its elements are present.[56] It never made any false representation to Spouses Galang for the latter to make partial payments of their outstanding balance; it did not conceal material facts from them; it did not make any statement to mislead them into believing

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[51] G.R. No. 199565, *rollo*, pp. 18-19.

[52] 649 Phil. 511, 518 (2010).

[53] 671 Phil. 377, 387 (2011).

[54] G.R. No. 199565, *rollo*, p. 20.

[55] *Id.*

[56] (a) conduct amounting to false representation or concealment of material facts or at least calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (b) intent, or at least expectation that this conduct shall be acted upon, or at least influenced by the other party; and (c) knowledge, actual or constructive of the actual facts, citing *Maneclang v. Baun*, 284 Phil. 302, 317 (1992).

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that there would be no foreclosure if they continued paying their account; it was consistent in its position that full payment was required to prevent foreclosure; and it did not act in bad faith nor actively participate in the acceptance of their late payments.[57]

G.R. No. 199635: *Petition for Review of HSBC*

On the other hand, HSBC faults the Court of Appeals for (1) ruling that HSBC-SRP was merely its conduit; (2) disregarding the relativity or privity of contracts under Article 1311 of the Civil Code; and (3) making factual findings not based on evidence, but mere conjectures.[58]

It reiterates that HSBC and HSBC-SRP are separate and distinct entities. In fact, the Court of Appeals, in its Decision dated March 31, 2011, expressly recognized the Trust Agreement between HSBC as trustor and HSBC-SRP as trustee. HSBC put up funds for its employees as beneficiaries, to be administered, managed, and maintained by HSBC-SRP with the former having no control over the same. Thus, it is erroneous to conclude that HSBC-SRP is a "mere conduit" of HSBC.[59]

Too, contracts take effect only between the parties, their assigns, and heirs.[60] The Court of Appeals ruled that HSBC was a real party in interest because it executed the loan and mortgage contracts through HSBC-SRP and it stood to benefit from or could be held liable for violating said contracts. This

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[57] G.R. No. 199565, *rollo*, pp. 181-182.

[58] G.R. No. 199635, *rollo*, pp. 9-32.

[59] *Id.* at 17-22.

[60] *Id.* at 22, citing Article 1311, Civil Code:
Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.
If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person. (1257a)

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ruling contradicts the following factual findings of the Court of Appeals, *viz.*, Ma. Theresa applied for the loan with *HSBC-SRP*; Ma. Theresa executed the mortgage contract in favor of *HSBC-SRP*; it was *HSBC-SRP* which demanded payment for the loan through demand letters; and *HSBC-SRP* instituted the foreclosure proceedings. Thus, it is clear that HSBC was not a party to any of these transactions.[61]

More, the ruling of the Court of Appeals that HSBC could be held liable for violation of the loan and mortgage contracts is not consistent with ***Broqueza*** and ***Tamonte***.

Finally, the Court of Appeals erroneously ruled that HSBC failed to exercise the high degree of diligence required of banks though such failure was not even imputed during trial. Notably, Estacion testified that it was human error which caused the acceptance of the late payments of Spouses Galang, not wanton carelessness or malice. Unfortunately, the Court of Appeals drew its conclusion, not based on the evidence, but on mere speculations.[62]

***Consolidated Comment of Spouses Galang in* G.R. Nos. 199565 *and* 199635**

In their *Consolidated Comment*[63] dated April 19, 2012, Spouses Galang reiterate that HSBC-SRP did not have any legal basis to foreclose their property; the HSBC Retirement Plan Rules and Regulations did not justify such foreclosure; and HSBC-SRP's acceptance of amortization payments from them constitutes estoppel. Further, the Court of Appeals was correct in holding that HSBC is a privy to the loan and mortgage contracts.[64]

Spouses Galang elucidate that since the HSBC Retirement Plan Rules and Regulations impose a condition – separation for a cause, before an employee loses his/her right to the loan benefits, there

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[61] G.R. No. 199635, *rollo*, pp. 22-24.

[62] *Id.* at 28-31.

[63] *Id.* at 114-128.

[64] *Id.* at 117-124.

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exists therefore a prejudicial question pertaining to the validity of the termination of Ma. Theresa, hence, the unilateral withdrawal of the loan benefit done by HSBC-SRP pending final resolution of this prejudicial question was premature. And while HSBC-SRP was not involved in the labor dispute, the privileges it extended to the beneficiaries were dependent on the employment status of the latter. At any rate, they were not in arrears anymore and were in fact up-to-date with their payments.[65]

Also, the provisions of the HSBC Retirement Plan Rules and Regulations constitute a contract of adhesion where they did not have the opportunity to negotiate with HSBC-SRP on the provisions affecting their loan. At any rate, they were not furnished copy of HSBC Retirement Plan Rules and Regulations and were never apprised of its contents. Worse, Ma. Theresa was not made aware of her automatic membership in the retirement benefit plan of HSBC-SRP. There was, therefore, no mutuality of contract between them.[66]

Even assuming that the HSBC Retirement Plan Rules and Regulations were valid, the same have not been incorporated in the Mortgage Agreement itself, specifically the automatic acceleration clause in case of the employee's separation from HSBC. To be sure, Article VI, par. H of the Mortgage Agreement limits the instances of default *where the mortgagor fails to pay the sums secured by the mortgage, or any part thereof, or fails to perform any of the conditions stipulated therein* – nothing more, nothing less. Estacion could not even show where it states that the loan becomes due and demandable should an employee be separated *without cause*.[67]

And even further assuming that HSBC-SRP had the right to foreclose by reason of Ma. Theresa's delay in payment or her termination from employment, the fact that HSBC-SRP had accepted the payment of arrears and succeeding amortizations

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[65] *Id.* at 118-119.

[66] *Id.* at 119.

[67] *Id.* at 119-120.

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from them, sans any comment should be deemed a waiver of its right to foreclose.[68]

Finally, while it is true that the named mortgagee is HSBC-SRP, not HSBC, the latter cannot deny privity to the foreclosure of the mortgage because its interests are so closely intertwined with those of HSBC-SRP that they practically have the same interests in the loan collection and foreclosure. Notably, HSBC-SRP had no staff of its own; it was HSBC that issued statements of accounts and overdue reminders, among others; it made confirmations and receipts of payments; it debited and collected loan payments from the employees' accounts; in the Memorandum of Understanding between some of the striking employees and HSBC, HSBC-SRP was included in the restructuring of loans; and lastly, HSBC-SRP did not even have a corporate personality of its own when their mortgage was foreclosed.

Issues

FIRST. Is the foreclosure of the subject mortgage dependent on the final resolution of the illegal dismissal case filed by Ma. Theresa Galang against HSBC?

SECOND. Was HSBC-SRP estopped from demanding full payment of the obligation from Spouses Galang and from subsequently foreclosing the mortgage on their property?

THIRD. Are Spouses Galang entitled to damages?

FOURTH. Are HSBC-SRP and HSBC distinct from each other?

Ruling

On the right of HSBC-SRP to foreclose the mortgage constituted to secure the housing loan

The Mortgage Agreement of HSBC-SRP and Spouses Galang reads, *inter alia, viz.*:

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[68] *Id.* at 123.

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III.

THE MORTGAGOR(S) hereby undertake(s) and agree(s) **to pay the MORTGAGEE, upon demand, any and all sums that may be or become due from and owing by the MORTGAGOR(S)** to said MORTGAGEE, under and in virtue of the credit or credit facilities hereby granted or hereinafter to be granted by the latter to the former together with the interest thereon at the rate computed in the manner set out in Article II hereof.

x x x

VI.

x x x II. In the event that the MORTGAGOR(S) **should fail to pay the sums of money secured by this mortgage, or any part thereof** in accordance with the terms and conditions herein set forth, **or should the MORTGAGOR(S) fail to perform any of the conditions stipulated herein**, then and in that case, **the MORTGAGEE shall have the right, at his election to foreclose this mortgage and sell the mortgaged property extrajudicially**, in the manner hereinafter in this paragraph set forth; and for such purpose the MORTGAGEE is hereby appointed the attorney-in-fact of the MORTGAGOR(S), with full power of substitution and revocation: x x x (Emphases and underscoring supplied)[69]

The Rules and Regulations, on the other hand, provide that the loan may be accelerated in case of termination for cause, *viz.*:

Article VII

x x x Regardless of the Employees, (sic) length of service to the Bank, an employee who is **separated from the service of the Bank for cause** or any other act for which the bank suffers loss or damages[,] **shall lose all his rights to the benefits provided under the Plan**.

x x x x

Article IX

Section 5.

x x x Should the Employee's service with the Bank be **terminated prior to full repayment of the loan, the Employee shall make a**

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[69] G.R. No. 199565, *rollo*, pp. 50-52.

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single payment to cover the outstanding balance." (Emphases and underscoring supplied).[70]

Taken together, these provisions clearly establish that Spouses Galang undertook to pay HSBC-SRP their monthly dues; and HSBC-SRP shall have the right to foreclose the property extrajudicially: (1) should they fail to pay any part of their loan OR (2) should Ma. Theresa be separated from her employment with HSBC for cause.

Both circumstances obtain here.

a. HSBC-SRP's right to foreclose under the Mortgage Agreement

Under the Mortgage Agreement, the remedy of foreclosure becomes available to HSBC-SRP the moment Spouses Galang fail to pay their installments. The rule is clear – foreclosure is valid when the debtor is in default in the payment of his obligation.[71] Undeniably, Spouses Galang had stopped paying their amortization for almost the entire year in 1994 – *default*, plain and simple. We therefore agree with HSBC-SRP that its right to foreclose had already accrued at that point.

To emphasize its right to foreclose, HSBC-SRP relies on ***HSBC Ltd. Staff Retirement Plan (now HSBC Retirement Trust Fund, Inc.) v. Spouses Broqueza***[72] and ***Spouses Tamonte v. HSBC Ltd., et al.***[73]

Tamonte and ***Broqueza*** share factual antecedents here, *viz.*: the co-employees of Ma. Theresa (1) also availed of loans under the HSBC-SRP; (2) they were terminated for participating in the same strike against HSBC; and (3) they also questioned the legality of their termination before the Labor Tribunals. In both ***Tamonte***

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[70] G.R. No. 199635, *rollo*, p. 30.

[71] *Development Bank of the Philippines v. Licuanan*, 545, 552 Phil. 544 (2007), citing *State Investment House, Inc. v. Court of Appeals*, 290 Phil. 222 (1992).

[72] 649 Phil. 511 (2010).

[73] 671 Phil. 377 (2011).

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and ***Broqueza***, the Court ruled in favor of HSBC-SRP, explaining that the enforcement of a loan agreement involves debtor-creditor relations founded on contract and does not, in any way, concern employee relations. The Court added that HSBC-SRP need not wait for the results of the illegal dismissal case before pursuing its remedies.

There is, however, a striking distinction between ***Tamonte*** and ***Broqueza***, on the one hand, and the present case, on the other, which prevents us from applying the doctrines in the former cases in a straightforward manner here -- Spouses Galang **updated their accounts** and **continued paying** their monthly amortizations after Ma. Theresa got dismissed from employment. Notably, in ***Broqueza*** and ***Tamonte***, petitioners therein admitted to not having paid any installment at all.

But as will be shown below, HSBC-SRP has the right to foreclose the mortgaged property regardless of whether the Court applies ***Tamonte*** and ***Broqueza*** here.

b. HSBC-SRP's right to foreclose under the Rules and Regulations

As judiciously observed by Senior Associate Justice Estela Perlas-Bernabe during deliberations, HSBC-SRP's right to foreclose under the Rules and Regulations bears relevance not just here, but in the other cases involving the same company and set of terminated employees.

Under the Rules and Regulations, Ma. Theresa is obligated to pay the entire amount of her outstanding loan upon her termination from service for cause. In this regard, the Court takes judicial notice of its earlier ruling in ***Hongkong & Shanghai Banking Corp. Employees Union v. National Labor Relations Commission*** (G.R. No. 156635, January 11, 2016) which held that Ma. Theresa and her co-employees were validly dismissed for staging an illegal strike, thus:

> The petitioners insist that all they did was to conduct an orderly, peaceful, and moving picket. They deny employing any act of violence or obstruction of HSBC's entry and exit points during the period of the strike.

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The contrary was undeniably true. The strike was far from orderly and peaceful. HSBC's claim that from the time when the strike was commenced on December 22, 1993 the petitioners had on several instances obstructed the ingress into and egress from its offices in Makati and in Pasig was not competently disputed, and should thus be accorded credence in the light of the records. We agree with HSBC, for all the affidavits and testimonies of its witnesses, as well as the photographs and the video recordings reviewed by LA Pati depicted the acts of obstruction, violence and intimidation committed by the petitioners during their picketing. It was undeniable that such acts of the strikers forced HSBC's officers to resort to unusual means of gaining access into its premises at one point. In this connection, LA Pati even observed as follows:

> [I]t must be pointed out that the Bank has shown by clear and indubitable evidence that most of the respondents have actually violated the pr[o]scription provided for in paragraph (b) of Article 264 on free ingress and egress. The incident depicted in the video footage of 05 January 1994. which has been viewed several times during the trial and even privately, demonstrates beyond doubt that **the picket was a non-moving, stationary one — nothing less but a barricade. This office is more than convinced that the respondents, at least on that day, have demonstrated an abnormally high degree of hatred and anger at the Bank and its officers (including the Bank's chief executive officer who fell to the ground as a result of the pushing and shoving) leading them to do anything to carry out their resolve not to let anymore inside the Bank.** Additionally, as observed by this Labor Arbiter, the tensed and disquieting relation between the parties became all the more apparent during the actual hearings as clearly evident from the demeanor and actuations of the respondents.

The situation during the strike actually went out of hand because of the petitioners' illegal conduct, compelling HSBC to secure an injunction from the NLRC as well as to file its petition for *habeas corpus* in the proper court in the interest of its trapped officers and employees; and at one point to lease a helicopter to extract its employees and officers from its premises on the eve of Christmas Day of 1993.

For sure, the petitioners could not justify their illegal strike by invoking the constitutional right of labor to concerted actions. Although the Constitution recognized and promoted their right to strike, they should still exercise the right *within the bounds of law*. Those bounds had been well-defined and well-known. Specifically, Article 264 (e)

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of the *Labor Code* expressly enjoined the striking workers engaged in picketing from committing any act of violence, coercion or intimidation, or from obstructing the free ingress into or egress from the employer's premises for lawful purposes, or from obstructing public thoroughfares. The employment of prohibited means in carrying out concerted actions injurious to the right to property of others could only render their strike illegal. Moreover, their strike was rendered unlawful because their picketing which constituted an obstruction to the free use of the employer's property or the comfortable enjoyment of life or property, when accompanied by intimidation, threats, violence, and coercion as to constitute nuisance, should be regulated. In fine, the strike, even if justified as to its ends, could become illegal because of the means employed, especially when the means came within the prohibitions under Article 264 (e) of the *Labor Code*.

In view of our ruling in G.R. No. 156635, the acceleration clause under the Rules and Regulations indubitably comes into play. Spouses Galang's failure to pay the accelerated amount of their obligation therefore entitled HSBC-SRP to foreclose their mortgaged property in accordance with the Rules and Regulations.

Notably, G.R. No. 156635 was only resolved in 2016. Thus, Spouses Galang assert that the foreclosure of the mortgaged property in October 1996 was premature since the validity of Ma. Theresa's dismissal from service was still pending at that time and was only resolved two (2) decades later; whether she was validly dismissed for cause was a prejudicial question which had to be resolved before foreclosure proceedings may be commenced. Both trial court and the Court of Appeals concurred that the foreclosure was premature.

We disagree.

For one, the rule on prejudicial questions only finds application criminal cases, thus:[74]

A prejudicial question is one that arises in a case the resolution of which is **a logical antecedent of the issue involved therein, and the cognizance of which pertains to another tribunal**. It is a question

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[74] *People v. Arambulo*, 760 Phil. 754, 761 (2015).

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based on **a fact distinct and separate from the crime but so intimately connected with it that it determines the guilt or innocence of the accused**, and for it to suspend the criminal action, it must appear not only that said case involves facts intimately related to those upon which the criminal prosecution would be based but also that in the resolution of the issue or issues raised in the civil case, the guilt or innocence of the accused would necessarily be determined.

Section 7, Rule 111 of the 2000 Rules of **Criminal Procedure** prescribes the elements that must concur in order for a civil case to be considered a prejudicial question, to wit:

> Section 7. Elements of prejudicial question. – The elements of a prejudicial question are: (a) the previously instituted civil action involves an issue similar or intimately related to the **issue raised in the subsequent criminal action**, and (b) the resolution of such issue determines whether or not the criminal action may proceed.

Aptly put, the following requisites must be present for a civil action to be **considered prejudicial to a criminal case** as to cause the suspension of the criminal proceedings until the final resolution of the civil case: (1) the civil case involves facts intimately related to those upon which the criminal prosecution would be based; (2) in the resolution of the issue or issues raised in the civil action, the guilt or innocence of the accused would necessarily be determined; and (3) jurisdiction to try said question must be lodged in another tribunal. (Emphases supplied; citations omitted)

Since the present case is for annulment of the foreclosure sale and does not in any way involve a criminal complaint, the concept of prejudicial question becomes inapplicable here.

For another, even assuming that G.R. No. 156635 may be treated as analogous to a prejudicial question, this could have only resulted in the suspension of the annulment proceedings, thus:

Section 6. *Suspension by reason of prejudicial question*. — A petition for suspension of the criminal action based upon the pendency of a prejudicial question in a civil action may be filed in the office of the prosecutor or the court conducting the preliminary investigation. When the criminal action has been filed in court for trial, the petition to suspend shall be filed in the same criminal action at any time before the prosecution rests.

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Verily, the pendency of G.R. No. 156635, at best, could have constituted a valid ground for issuance of an injunction and sufficient reason to hold the annulment proceedings in abeyance until G.R. No. 156635 got resolved. It does not, by itself, warrant the nullification of the foreclosure sale.

In any event, G.R. No. 156635 had already been resolved with finality against Ma. Theresa and her co-employees. Consequently, there is no longer any ‘’prejudicial question” or any other legal impediment in resolving the case on the merits.

All told, whether under the Mortgage Agreement or the Rules and Regulations, HSBC-SRP's right to foreclose the mortgaged property had already accrued.

HSBC-SRP and HSBC are nonetheless estopped from demanding payment in full and subsequently foreclosing the mortgage

Spouses Galang nevertheless insist that the acceptance[75] of the payment for their arrears and monthly amortizations from 1994 to 1996 and accordingly sending them their updated account after twenty-two (22) months should place HSBC-SRP in estoppel from demanding full payment and later on, foreclosing the mortgage.[76]

On the other hand, HSBC-SRP ripostes that estoppel does not apply here as none of its elements are present.[77] *First*, it never made any false representation to Spouses Galang for them to continue in their monthly payments; *second*, it did not conceal material facts

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[75] NB. Payments were coursed through their payroll account with HSBC, in which employees could make deposits for payment despite termination of salaries, the set-off with such salaries were not the sole source of payment of amortizations.

[76] G.R. No. 199635, *rollo*, pp. 117-124.

[77] (a) conduct amounting to false representation or concealment of material facts or at least calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (b) intent, or at least expectation that this conduct shall be acted upon, or at least influenced by the other party; and (c) knowledge, actual or constructive of the actual facts, citing *Maneclang v. Baun*, 284 Phil. 302, 317 (1992).

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from them; *third*, it did not mislead them into believing that there would be no foreclosure if they paid their arrears and continued paying their account; *fourth*, it was consistent in its position that full payment was required to prevent foreclosure; and *finally*, it did not act in bad faith in receiving Spouses Galang's continued payments, as it did not actively participate in the acceptance of their late payments.[78]

We agree with Spouses Galang.

Article 1431 of the Civil Code defines estoppel, thus:

> Art. 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.

Spouses Loquellano v. HSBC, HSBC-SRP, and Manuel Estacion,[79] is *apropos*:

> Estoppel is a doctrine that **prevents a person from adopting an inconsistent position, attitude, or action if it will result in injury to another**. One who, **by his acts, representations** or admissions, or by his **own silence when he ought to speak out**, intentionally or through **culpable negligence**, induces another to **believe certain facts to exist and such other rightfully relies and acts on such belief, can no longer deny the existence of such fact as it will prejudice the latter**. The doctrine of estoppel is based upon the grounds or public policy, fair dealing, good faith and justice. It springs from equitable principles and the equities in the case. It is designed to aid the law in the administration of justice where, **without its aid, injustice might result**. (Emphases and underscoring supplied)

Loquellano is another case involving similar events and incidents – almost on all fours here. In ***Loquellano***, petitioner Rosalina obtained a ₱400,000.00 housing loan from HSBC-SRP, similarly secured by an analogous Mortgage Agreement and paid through monthly amortizations collected through automatic

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[78] G.R. No. 199565, *rollo*, pp. 181-182.

[79] G.R. No. 200553, December 10, 2018.

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salary deductions. Rosalina was terminated together with her co-employees because of the strike they had staged. After losing her employment, she failed to pay her monthly dues beginning January 1994. Rosalina nevertheless offered to make partial payments for her arrears which HSBC-SRP rejected. Subsequently, she received an Installment Due Reminder dated July 26, 1995 which showed her monthly installment overdue and the accrued interest. On August 11, 1995, Rosalina deposited amounts in her salary savings account to pay for the arrears reflected in the reminder, which HSBC-SRP accepted. Consequently, she received updated Installment Due Reminders in August 28, 1995, September 27, 1995, December 21, 1995, February 26, 1996, March 13, 1996 and April 11, 1996 – all reflecting her payments and diminishing loan balances based on these payments which HSBC-SRP accepted. Despite Rosalina's payments, HSBC-SRP proceeded to extrajudicially foreclose her mortgage. The Court however ruled that such foreclosure was invalid, *viz.*:

> To stress, respondent HSBC-SRP continuously **sent out monthly Installment Due Reminders to petitioner** Rosalina **despite its demand letter** dated September 25, 1995 **to pay the full amount of the loan obligation** within 3 days from receipt of the letter. It, likewise, **continuously accepted petitioner Rosalina's subsequent monthly amortization payments** until June 1996; thus, making their **default** immaterial. Moreover, there was **no more demand for the payment of the full obligation afterwards**. Consequently, petitioners were made to believe that respondent HSBC-SRP was applying their payments to their monthly loan obligations as it had done before. It is now estopped from enforcing its right to foreclose by reason of its acceptance of the delayed payments.
>
> Also, Article 1235 of the Civil Code provides that when the **creditor accepts performance, knowing its incompleteness and irregularity without protest or objection, the obligation is deemed complied with**. Respondent HSBC-SRP accepted Rosalina's payment of her housing loan account for almost one year without any objection. (Emphases and underscoring supplied)

Conspicuously, the Court acknowledged that Spouses Loquellano were already in **default**, as with Spouses Galang here, albeit it had become ***immaterial*** due to **estoppel**. The

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Court considered the following circumstances: *first*, HSBC-SRP **sent updated accounts** through the monthly Installment Due Reminders; *second*, it **continuously accepted** Rosalina's monthly amortizations; and *third*, HSBC-SRP **no longer demanded** payment of the **full obligation**. Taken together, these acts induced Rosalina to believe that her default had become immaterial and relied on such belief that HSBC-SRP can no longer deny the same, as it would greatly prejudice Rosalina.

Here, too, HSBC-SRP sent Spouses Galang Installment Due Reminders, particularly in December 13, 1994 and September 11, 1996; this, despite the fact that it earlier sent Spouses Galang demand letters in November 28, 1994, September 25, 1995 and July 19, 1996. Interestingly, the final Installment Due Reminder was sent two (2) months after the last demand letter was sent by HSBC-SRP. The Court is therefore convinced that by sending the Installment Due Reminder *after* accepting unconditionally twenty-two (22) monthly amortizations and *after* the last demand, HSBC-SRP made Spouses Galang believe that they were up-to-date with their account and that their default with HSBC-SRP had become immaterial. Indeed, to rule otherwise would greatly prejudice Spouses Galang who, in good faith, believed that their payments had stalled the foreclosure. Hence, as in ***Loquellano***, the HSBC-SRP's foreclosure of Spouses Galang's property must be nullified.

Moving forward, however, the Court bears stress that in view of our ruling in G.R. No. 156635, it would no longer be sufficient for Spouses Galang to pay their monthly installments. For as earlier stated, under the Rules and Regulations, Spouses Galang are already under obligation to make a single payment covering the entire outstanding balance. This is without prejudice, however, to proper defenses which include future actions of HSBC-SRP's which may again place it in estoppel.

Should Spouses Galang fail to pay or comply with their obligation, HSBC-SRP may institute either a personal action for its collection or a real action to extrajudicially foreclose the mortgage, which remedies are alternative, not cumulative or

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successive,[80] and the election or use of one remedy operates as a waiver of the others.[81]

Spouses Galang are not entitled to damages

As for their claim for damages, Spouses Galang continue to assert that HSBC-SRP's foreclosure was not only without basis, but illegal and contrary to morals, good customs and public policy. Assuming that HSBC-SRP had basis to foreclose, it was exercised in bad faith and grave abuse of power. Thus, damages should have been awarded to them.

Significantly, the courts below are consistent in ruling that Spouses Galang are not entitled to damages. While the trial court did not grant damages on the ground that the case was prematurely filed, the Court of Appeals simply found no basis for the award at all. It ruled that Spouses Galang failed to allege, much less, prove moral suffering, mental anguish, sleepless nights, besmirched reputation, or embarrassment. Consequently, they are also not entitled to exemplary damages.[82]

We agree with the courts below.

Spouses Estrada v. Philippine Bus Rabbit Lines, Inc.[83] elucidates:

> Moral damages include **physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury**. Though incapable of pecuniary computation, **moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission**.
>
> Under Article 2219 of the Civil Code, moral damages are recoverable in the following and analogous cases: (1) a criminal offense resulting in physical injuries; (2) quasi-delicts causing physical injuries; (3) seduction, abduction, rape or other lascivious acts; (4) adultery or concubinage; (5) illegal or arbitrary detention or arrest; (6) illegal search; (7) libel,

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[80] *Marilag v. Martinez*, 764 Phil. 576, 586 (2015).

[81] *Sycamore Ventures Corporation v.* 721 Phil. 290, 297 (2013).

[82] CA Decision, pp. 12-13.

[83] 813 Phil. 950, 064 (2017).

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slander, or any other form or defamation; (8) malicious prosecution; (9) acts mentioned in Article 309; 22 and (1) acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

x x x [C]ase law establishes the following requisites for the award of moral damages: (1) there must be **an injury clearly sustained** by the claimant, whether physical, mental or psychological; (2) there must be **a culpable act or omission factually established**; (3) the **wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant**; and (4) the award for damages is predicated on any of the cases stated in Article 2219 of the Civil Code.(Emphases added; citations omitted)

While Spouses Galang alleged bad faith, grave abuse, and illegality on part of petitioners, they utterly failed to substantiate the same. In any event, HSBC-SRP had basis to foreclose the mortgage in accordance with the Mortgage Agreement were it not for its actions which placed it on estoppel.

HSBC-SRP and HSBC are separate entities

Finally, in refusing to dismiss the case against HSBC, the Court of Appeals seemingly applied a variation of the doctrine of piercing the veil of corporate fiction, thus: *when two business enterprises are owned, conducted and controlled by the same parties, both law and equity will, when necessary to protect the rights of third parties, disregard the legal fiction that two corporations are distinct entities and treat them as identical or one and the same*.[84]

We disagree.

Though a subsidiary company's separate corporate personality may be disregarded when the evidence shows that such separate personality was being used by its parent or holding corporation to perpetrate a fraud or evade an existing obligation,[85] none of

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[84] *Heirs of Fe Tan Uy v. International Exchange Bank*, 703 Phil. 477 (2013); *Goldkey Development Corporation v. International Exchange Bank*, 703 Phil. 477 (2013), citing *General Credit Corporation v. Alsons Development and Investment Corporation*, 542 Phil. 219, 231 (2007).

[85] *Maricalum Mining Corporation v. Florentino, et al.*, 836 Phil. 655, 664 (2018).

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these circumstances were alleged or proved by Spouses Galang. They simply claimed that HSBC-SRP and HSBC acted in bad faith when they foreclosed the mortgaged property though they (Spouses Galang) were up to date in their payments.

More, the insistence of Spouses Galang that HSBC was privy to the Mortgage Agreement for its interests are so intertwined with those of HSBC-SRP that they have *become identical* – constitutes a collateral attack on the corporate personality of HSBC-SRP which is prohibited by the Corporation Code of the Philippines.[86] Such an inquiry into the legal personality of a corporation may only be made by the Solicitor General in a Quo Warranto proceeding.

At any rate, HSBC correctly argues that it had no participation in the foreclosure proceedings. The parties even stipulated during the pre-trial that HSBC was not a signatory to any contract between Spouses Galang and HSBC-SRP. Its role was limited to determining who among its employees were eligible to apply for housing loans, processing and approval of which were left to the discretion of HSBC-SRP.

Considering, too, that Spouses Galang are not entitled to damages, there is simply no reason to pierce the corporate veil as they would have nothing to collect or regain from HSBC. Otherwise stated, Spouses Galang do not have a cause of action against HSBC.

All told, the Court of Appeals correctly nullified the foreclosure sale, albeit for a different reason. Meanwhile, there is simply no reason to involve HSBC in the fray as a non-party to the Mortgage Agreement. Consequently, the Court is compelled to dismiss the petition of HSBC-SRP and grant the petition of HSBC.

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[86] Section 19. De facto Corporations. - The due incorporation of any corporation claiming in good faith to be a corporation under this Code, and **its right to exercise corporate powers, shall not be inquired into collaterally in any private suit to which such corporation may be a party. Such inquiry may be made by the Solicitor General in a quo warranto proceeding**.

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ACCORDINGLY, in **G.R. No. 199565**, the petition is **DENIED**. The Decision dated March 31, 2011 and Resolution dated December 6, 2011 of the Court of Appeals in CA-G.R. CV No. 90491 are **AFFIRMED**. The foreclosure of the mortgage on the property of Spouses Juan I. Galang and Ma. Theresa Ofelia G. Galang is **declared VOID**.

Meanwhile, in **G.R. No. 199635**, the petition is **GRANTED**. The complaint for *Annulment of Sale with Damages and Preliminary Injunction* is **DISMISSED** as against **HONGKONG AND SHANGHAI BANKING CORP.** for lack of cause of action.

SO ORDERED.

Perlas-Bernabe (Chairperson), Inting,[*] *Rosario,* and *J. Lopez, JJ.*,[**] concur.

APPEARANCES OF COUNSEL

Sanidad Viterbo Enriquez & Tan Law Firm for *HSBC.*
Cruz Enverga and Lucero for *HSBC Retrirement Trust Fund, Inc.*
Tañada Vivo and Tan for *Sps. Galang.*

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[*] Designated additional member per Raffle dated 25 January 2021.

[**] Designated as additional member per Special Order No. 2822 dated April 7, 2021.