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Moreover, since Roque's acquittal was based on the failure of the prosecution to prove his guilt beyond reasonable doubt, there could then be no case for malicious prosecution, much less under the Chapter on Human Relations of the Civil, there being no showing of a violation of Article 19 of the Civil Code. *Bad faith* is the only element relied upon the courts below, which is not the whole of Article 19. Neither can petitioner be held liable for damages under Articles 20 and 21 of the Civil Code. In the former, the defendant must wilfully or negligently cause damage to another in a manner contrary to law. Article 21 involves causing loss or injury to another in a manner that is contrary to morals, good customs or public policy. There is no finding that petitioner had so acted in the ways mentioned in both Articles.

I vote then to *GRANT* the petition and to *REVERSE* the challenged decision of the Court of Appeals.

SECOND DIVISION

[G.R. No. 121739. June 14, 1999]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **COURT OF APPEALS, and SPOUSES EDILBERTO and ELENA NATIVIDAD,** *respondents.*

SYNOPSIS

Spouses Natividad were granted by PNB a loan of ₱34,000.00 and to secure payment thereof, a real estate mortgage over 9 parcels of individually titled lands in Sta. Maria, Pangasinan was executed in favor of PNB. The Bank appraised the said properties for loan purposes in the total amount of ₱49,000. The spouses were able to pay PNB ₱15,000.00, but thereafter, failed to pay the balance despite demands. Hence, the bank foreclosed the mortgaged properties extrajudicially. A public auction sale of the said properties was

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conducted and the bank as the highest bidder in the amount of ₱7,000.00 was thus awarded the properties. This amount, however, was short of ₱64,624.31, representing the balance of the principal obligation and related expenses. And for failure to redeem the properties within the period prescribed by law, PNB filed the instant deficiency claim. The spouses alleged, among others, that they should not be made to pay the deficit as the public auction sale was tainted with fraud and similar irregularities. The trial court DENIED the deficiency claim and held the total obligation of the spouses as fully paid. The Court of Appeals affirmed this ruling. Hence, this petition.

Both the trial court and the Court of Appeals held PNB to be estopped from pursuing its deficiency claim on the ground that the deficiency arose from the Bank's reappraisal of the properties in question for purposes of fixing the bid price thereof. From its initial appraisal of ₱49,000, PNB substantially downgraded its appraisal of the value of the properties at auction for only ₱7,000 as the sole bidder. PNB had lowered its appraisal of the properties for the purpose of acquiring the same and still collecting from the spouses a deficiency claim. The view of both courts was that the spouses relied in good faith on PNB's initial appraisal of the properties as worth ₱49,000 in mortgaging their properties on the theory that in case of their failure to pay their loan, their properties can answer for their obligation. However, there are several factors militating against this view. Based on the evidence, the reappraisal of the properties was their fair value and the original appraisal was made with the active participation of the spouses. Further, the spouses were benefited rather than harmed by the substantially lower reappraisal valued of their properties because there is a right to redeem and the spouses had several options to recover from their predicament but which they have failed to exercise. Hence, the Court reversed the appealed decision.

SYLLABUS

1. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; SPECIAL CONTRACTS; MORTGAGE; EXTRAJUDICIAL FORECLOSURE OF MORGAGES; DEFICIENCY CLAIM THEREFROM IS ALLOWED.** — To begin with, it is settled that if the proceeds of the sale are insufficient to cover the debt in an extrajudicial foreclosure of the mortgage, the mortgagee is entitled to claim the deficiency from the debtor. For when the legislature intends to deny the right of a creditor to sue for any deficiency

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resulting from foreclosure of security given to guarantee an obligation it expressly provides as in the case of pledges [Civil Code, Art. 2115] and in chattel mortgages of a thing sold on installment basis [Civil Code, Art. 1484(3)]. Act No. 3135, which governs the extrajudicial foreclosure of mortgages, while silent as to the mortgagee's right to recover, does not, on the other hand, prohibit recovery of deficiency. Accordingly, it has been held that a deficiency claim arising from the extrajudicial foreclosure is allowed.

2. **ID.; ID.; ESTOPPEL; ELEMENTS.**— The essential elements of estoppel are: (1) 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; (2) intent, or at least expectation, that this conduct shall be acted upon by, or at least influence, the other party; and (3) knowledge, actual or constructive, of the real facts.

3. **ID.; ID.; ID.; PARTY CLAIMING ESTOPPEL; ELEMENTS.**— As related to the party claiming the estoppel, the essential elements are: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reliance, in good faith, upon the conduct or statements of the party to be estopped; (3) action or inaction based thereon of such character as to change the position or status of the party claiming the estoppel, to his injury, detriment, or prejudice.

4. **ID.; ID.; ID.; ID.; ID.; RELIANCE IN GOOD FAITH, UPON THE STATEMENTS OF THE PARTY TO BE ESTOPPED; NOT PRESENT IN CASE AT BAR.**— There is no basis for supposing that respondent spouses did not know the true worth of their properties which were agricultural rather than residential with improvements thereon. Respondents could not, therefore, have been misled by any statement made by petitioner. Indeed, respondent spouses offered no evidence as to the worth of their properties, limiting themselves to their self-serving allegations that their properties were worth substantially more than petitioner bank's reappraisal and even its original appraisal.

5. **ID.; ID.; SPECIAL CONTRACTS; MORTGAGE; EXTRA-JUDICIAL FORECLOSURE OF MORTGAGES; INADEQUACY OF PRICE; NOT MATERIAL WHEN THERE IS RIGHT TO REDEEM; CASE AT BAR.**— Respondent spouses were benefited rather than harmed by the substantially lower reappraised value of their properties. As held in

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Velasquez v. Coronel: x x x "When there is the right to redeem, *inadequacy of price should not be material*, because the judgment debtor may reacquire the property or also sell his right to redeem and thus recover the loss he claims to have suffered by reason of the price obtained at the auction sale." Indeed, as pointed out by petitioner bank, respondents had several options. They could have participated in the public bidding or exercised their right of redemption or sold such right to redeem or simply settled their debt. However, they did none of these things despite due notice to them. Respondents are thus to blame for their predicament. Their claim of financial distress is not an excuse to evade their clear obligation to the bank.

6. **ID.; ID.; ID.; ID.; ID.; ID.; CASE AT BAR.**— The amount of ₱64,624.31 is the amount of the deficiency claim of the bank as of March 31, 1983 before the filing of the present complaint on April 21, 1983. To the balance of ₱60,635.63 left after applying petitioner bank's winning bid of ₱7,000.00, the bank added interest, penalties, attorney's fees, and other charges totalling ₱3,988.68. This is in accordance with the terms of the promissory note. Petitioner also asked in its complaint for attorney's fees equal to 10% of the total amount due as of the time of payment, litigation expenses, and costs for purposes of the present action. The claim is proper. The proceedings for foreclosure is extrajudicial and summary in nature, while that for the deficiency is judicial. Hence, the efforts exerted by the lawyer in both should be recognized. Both the deed of mortgage and the promissory note provide for recovery of attorney's fees.

APPEARANCES OF COUNSEL

The Chief Legal Counsel (PNB) for *petitioner.*
Emmanuel C. Lising for private respondent.

DECISION

MENDOZA, *J.*:

This is a petition for review of the decision, dated July 31, 1995, of the Court of Appeals,[1] affirming the dismissal by the Regional

[1] Petition, Annex A; *Rollo*, pp. 33-41.

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Trial Court (RTC) of Quezon City, Branch 99 of the complaint filed by petitioner Philippine National Bank (PNB) to recover the deficiency of the debt owed to it by respondent spouses Edilberto and Elena Natividad after the extrajudicial foreclosure of the properties given by respondent spouses as collateral for their loan.

The facts are stated in the following portion of the decision of the trial court:

> Material facts culled from the records reveal that on December 29, 1975, [respondent spouses] were granted by the [petitioner] bank a one-year Time Loan Commercial (TLC) of THIRTY-FOUR THOUSAND PESOS (₱34,000.00). To secure the payment of said loan, [respondent spouses] executed in favor of [petitioner] PNB a real estate mortgage over nine (9) parcels of individually titled lands located in Sta. Maria, Pangasinan with an aggregate area of THREE THOUSAND TWO HUNDRED NINETY-TWO (2,292) square meters. These properties were declared for taxation purposes in the names of [respondent spouses] (Exh. 4) with the Municipal Treasurer of Sta. Maria, Pangasinan. As a pre-requisite for the approval of [respondent spouses'] loan application, [petitioner] thru its duly authorized inspector conducted an ocular inspection of the premises of the mortgaged properties to ascertain the market value thereof. The properties after due inspection and evaluation was appraised by [petitioner] PNB for loan purposes in the total amount of FORTY- NINE THOUSAND PESOS (₱49,000.00) thereby justifying the grant of the loan applied for.
>
> Due to dire financial constraints, [respondent spouses] after paying FIFTEEN THOUSAND PESOS (₱15,000.00) (Exhs. "5" and "5-A") failed to pay the balance despite repeated demands by [petitioner PNB] (Exhs. "E", "F", "G", "M", "N", and "O"). Thereafter, [petitioner] bank as a recourse foreclosed the mortgaged properties extrajudicially, after compliance with the required publications of notices (Exhs. "K" and "K-1").
>
> On November 26, 1982, the public auction sale of the said properties were conducted in Pangasinan, where the properties are located, by the provincial sheriff. [Petitioner] bank as the highest bidder for SEVEN THOUSAND PESOS (₱7,000.00), (Exh. "L") was thus awarded the herein properties. This amount, however, was short of SIXTY-FOUR THOUSAND SIX HUNDRED TWENTY-FOUR and 31/100 (P64,624.31) representing the balance on the principal obligation, accrued interest, penalties, attorney's fees, and expenses of litigation (Exhs. "D" and "D-2"). For failure to redeem the properties within the statutory period allowed by law, [petitioner] filed the instant deficiency claim.

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[Respondent spouses] on the other hand interposed as justification of their inability to redeem the properties their continuing financial hardships. More than this, they professed that they should not be made to pay the deficit among other grounds as the aforesaid public auction sale was tainted with fraud and similar irregularities.[2]

On the basis of these facts, the trial court rendered its decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the deficiency claim is hereby DENIED and the total obligation of the defendants is hereby considered fully paid. This action is DISMISSED with costs against the plaintiff.

SO ORDERED.[3]

The RTC justified its decision, thus:

. . . The peculiar circumstances of this case is such that [petitioner] is estopped from recovering alleged deficiency judgment from the [respondents]. It must be noted from the records that prior to the approval of the [respondents'] loan application and as a pre-requisite therefor, [petitioner] thru its duly authorized inspector, conducted an inspection and evaluation of the properties offered as security for the purpose of determining its fair market value and came out with a report dated December 10, 1975 (Exh. 1) with an appraisal thereof of FORTY-NINE THOUSAND PESOS (₱49,000.00). Asked on the general practice of all banks, on cross examination, Elizabeth Gonzales, [petitioner's] employee testified that banks get sixty or seventy per cent (60% or 70%) of market value of the properties (TSN, May 29, 1986, Exh. "P") as the loan value thereof; hence, the amount of THIRTY-FOUR THOUSAND PESOS (P34,000.00) was assigned and approved by [petitioner] unilaterally [as] its loanable worth. Apparently, with the high expectancy that [it] may be the lone bidder of the properties in the public auction sale in the event of foreclosure proceedings, [petitioner] re-appraised the same by assigning thereto the value of TWO THOUSAND PESOS (P2,000.00) as basis for fixing the bid price thereof, thus the herein properties were reclassified as plain agricultural lands without giving due regard to the certification of the Municipal Treasurer of Sta. Maria, Pangasinan that the subject lots were assessed as residential concerns on the basis of the subdivision plan of the premises duly approved by the Land Registration Commission (now Land Registration Authority).

[2] Records, pp. 255-258.

[3] *Id.*, p. 258.

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Hence, it can thus be deduced from the foregoing that the downward valuation of the mortgaged property is questionable and unjust, if not dubiously schemed. The act of the [petitioner] in re-classifying the land for the purpose of deriving therefrom a lower valuation and establishing the basis for a deficiency claim to the detriment of the [respondents] can not be countenanced. Real estate properties almost always appreciate in value considering the high rate of inflation. It is thus quite improbable that after six (6) years, the assessed value of the nine (9) parcels of land could have depreciated drastically from FORTY-NINE THOUSAND PESOS (₱49,000.00) to TWO THOUSAND PESOS (₱2,000.00) according to [petitioner's] self-serving re-appraisal. We cannot gainsay the fact that had there been no reclassification nor re-assessment of the mortgaged properties, there could have been no deficiency liability to speak of. Were it not for the residential assessments of the properties, [petitioner] would not have granted the loan transaction of the properties, likewise, [respondents] would not have pushed through with their loan application. The [petitioner] in the instant case, through its act and declarations, intentionally led the [respondents] to believe that the valuation it assigned to the properties as security is its real market value, and the [respondents] relying upon such legitimate belief, acted in good faith with strong reliance on [petitioner's] aforesaid policy on real estate loan.

It is very evident, therefore, as in this case, that the principle of estoppel applies to the [petitioner]. Consequently, the [respondents] should not be made to suffer for [petitioner's] own doing by downgrading the price of the properties which resulted to an undue advantage over the [respondents] at the auction sale. Necessarily, in the spirit of fair play and observance of equity, [petitioner] bank must bear the loss it sustained as a consequence of its failure to justify its act which is diametrically opposed to sound business dealings. [Respondents] who are innocent of the scheme adopted by the [petitioner] bank in reducing the value of the properties resulting to its unwarranted gains shall not be permitted to suffer from unmeritorious claim.[4]

On appeal, the Court of Appeals affirmed, stating:

It is, therefore, very evident to this Court the dubious scheme perpetrated by [petitioner] bank on [respondent spouses] was not only to keep the latter's ₱15,000.00 initial payments, but also to grab

[4] *Id.*, pp. 256-258.

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ownership of mortgaged properties through self-serving appraisal prejudicial to the rights of [respondent spouses], and much more still to hold [respondent spouses] liable for the deficiency amount of the extrajudicial foreclosure of mortgage. Such practice cannot be countenanced by the Court.[5]

Hence, this petition. Petitioner contends that —

I

THE CA ERRED IN HOLDING THAT PNB CANNOT RECOVER ITS DEFICIENCY CLAIM AGAINST SPOUSES EDILBERTO AND ELENA NATIVIDAD ARISING FROM EXTRAJUDICIAL FORECLOSURE DESPITE CLEAR JURISPRUDENCE ALLOWING THE SAME.

II

THE CA ERRED IN HOLDING THAT PECULIAR CIRCUMSTANCES EXIST IN THE INSTANT CASE RENDERING PETITIONER BANK ESTOPPED FROM RECOVERING ITS DEFICIENCY CLAIM.

III

THE CA ERRED IN NOT HOLDING, ASSUMING *ARGUENDO* THAT THE MORTGAGED PROPERTY WAS SOLD AT AN AMOUNT LESS THAN ITS FAIR OR ACTUAL MARKET VALUE, THAT THERE WAS NO DISADVANTAGE GOING FOR THE MORTGAGORS. ON THE CONTRARY, THE NATIVIDADS STAND TO GAIN WITH A REDUCED PRICE BECAUSE THEY POSSESS THE RIGHT OF REDEMPTION.[6]

To begin with, it is settled that if the proceeds of the sale are insufficient to cover the debt in an extrajudicial foreclosure of the mortgage, the mortgagee is entitled to claim the deficiency from the debtor. For when the legislature intends to deny the right of a creditor to sue for any deficiency resulting from foreclosure of security given to guarantee an obligation it expressly provides as in the case of pledges [Civil Code, Art. 2115] and in chattel

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[5] Petition, Annex A; *Rollo*, p. 40.

[6] Petition, p. 10; *Id.*, p. 19.

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mortgages of a thing sold on installment basis [Civil Code, Art. 1484(3)]. Act No. 3135, which governs the extrajudicial foreclosure of mortgages, while silent as to the mortgagee's right to recover, does not, on the other hand, prohibit recovery of deficiency. Accordingly, it has been held that a deficiency claim arising from the extrajudicial foreclosure is allowed.[7]

The question in this case is whether, as held by both the trial and appellate courts, petitioner is estopped from pursuing its deficiency claim arising from the extrajudicial foreclosure against respondent spouses' properties.

The essential elements of estoppel are: (1) 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; (2) intent, or at least expectation, that this conduct shall be acted upon by, or at least influence, the other party; and (3) knowledge, actual or constructive, of the real facts. As related to the party claiming the estoppel, the essential elements are: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reliance, in good faith, upon the conduct or statements of the party to be estopped; (3) action or inaction based thereon of such character as to change the position or status of the party claiming the estoppel, to his injury, detriment, or prejudice.[8]

Both the trial court and the Court of Appeals held petitioner to be estopped from pursuing its deficiency claim on the ground that the deficiency arose from petitioner bank's reappraisal of the properties in question for purposes of fixing the bid price thereof. From its initial appraisal of ₱49,000.00 nearly seven years earlier, petitioner substantially downgraded its appraisal of the value of the properties prior to foreclosure and purchased the properties at auction for only ₱7,000.00 as the sole bidder (Exh. L).[9] Both courts

[7] *Philippine Bank of Commerce v. De Vera*, 6 SCRA 1026 (1962). Accord, *State Investment House, Inc. v. Court of Appeals*, 217 SCRA 32 (1993); *Prudential Bank v. Martinez*, 189 SCRA 612 (1970); *DBP v. Tomeldan*, 101 SCRA 171 (1980); *DBP v. Zaragoza*, 84 SCRA 608 (1978); *DBP v. Mirang*, 66 SCRA 141 (1975); *DBP v. Vda. de Moll*, 43 SCRA 82 (1972).

[8] *Kalalo v. Luz*, 34 SCRA 337, 347 (1970).

[9] Per Certificate of Sale, Folder of Exhibits, p. 46.

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held that petitioner had lowered its appraisal of the properties for the purpose of acquiring the properties and still collecting from respondent spouses a deficiency claim. In their view, respondent spouses relied in good faith on petitioner's initial appraisal of their properties as worth P49,000.00 in mortgaging their properties on the theory that in case of their failure to pay their loan, their properties can answer for their obligation.

There are, however, several factors militating against this view.

First. Based on the evidence presented, it does appear that the reappraisal of the properties was their fair value. As stated in the report (Exh. R),[10] dated January 17, 1980, of petitioner's credit investigator, Dionisio C. Damasco, Jr., who reappraised the properties at ₱7,000.00 only:

Per titles and current tax declarations, the collateral is situated in Bo. San Mariano, Sta. Maria, Pang., but actual location is in Bo. Balloy, Sta. Maria, Pang. These are two adjacent barrios. Distance of the property from the Bo. Boundary is about 250 m.

The property with a former area of 7,926 sq. ms. was bought by Mr. Edilberto Natividad from Mr. Esperidion Cabanayan, Sr. for ₱10,000.00 in 1975 and was later subdivided in the same year into Blocks 1 and 2 and 3 Road lots. These 3 road lots are nonexistent when inspected.

Lot 9 when plotted will not close & may be due to typographical error in point 4 to 1.

Though declared as residential per separate Tax Declarations, I am valuing it as agricultural for the following reasons:

1. Per our Bank Appraiser's Manual prepared by the Credit Dept. (2nd Edition-1976, p. 62) [Exh. S[11]], it states that if a residential subdivision is less than 60% of the projected development, it should be considered as raw land value. The collateral has no improvement at all (except for the agricultural crops). The current market value of agricultural lands in Bo. Balloy surrounding the property ranges from ₱15,000 to ₱25,000 per ha. or an ave. of ₱20,000, hence its pertinent market value is ₱7,000 (20,000 x 2392/10000 = ₱6,584.00 rounded to ₱7,000).

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[10] *Id.*, p. 56.

[11] *Id.*, p. 57.

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2. Actual use is agricultural planted to palay, mongo & beans

3. No visible concrete stone monuments to properly identify its subdivision into several lots

4. Distance from residential houses: N., about 860 ms.; S., about 250 ms.; E & W., even within a radius of one km. are agricultural lands. Surroundings are planted to palay and other secondary crops.

5. It is about 1.2 ms. below road level. It needs refilling to be fit for residential purposes and in order not to be flooded.

However, the provincial road leading to it is currently undergoing widening, elevation, leveling, and will possibly be asphalted.[12]

Damasco, Jr. testified:

I observed that the property was plainly agricultural. There were no concrete stones, monuments or pavements to indicate that the property was subdivided. It was planted with palay and corn. And the property is below road level, surroundings to the property were purely agricultural lands... The surface of the area was plain soil, ideal for rice or palay.[13]

Damasco, Jr.'s findings were corroborated by another PNB inspector, Romeo A. Taganas, Jr., who in his report, dated October 9, 1981 (Exh. Q),[14] stated that the properties were situated in a sparsely populated area, "being cultivated by Juaning Sison," and that the palay harvested thereon had to be transported 1.5 kilometers in order to be brought for sale to the Sta. Maria town. Taganas, Jr. in fact appraised the properties at P2,000.00, which was P5,000.00 less than Damasco, Jr.'s appraisal and the winning bid of petitioner bank.

Edilberto Natividad himself impliedly admitted that the properties were actually agricultural land when he told the court that "these are classified as residential lots by the Assessor's Office in the meantime that they are not yet used as residential lots they will still be used as agricultural as in accordance with the decree of the President to produce palay or any productive use of the land."[15]

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[12] Exh. R, *Id.*, p. 56.

[13] TSN, p. 13, Aug. 28, 1986.

[14] Folder of Exhibits, pp. 53-54.

[15] TSN, p. 13, Feb. 3, 1989.

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There is thus no basis for supposing that respondent spouses did not know the true worth of their properties which were agricultural rather than residential with improvements thereon. Respondents could not, therefore, have been misled by any statement made by petitioner.[16] Indeed, respondent spouses offered no evidence as to the worth of their properties, limiting themselves to their self-serving allegations that their properties were worth substantially more than petitioner bank's reappraisal and even its original appraisal.

Second. Moreover, it appears that rather than being passive bystanders in the original appraisal of their properties, respondent spouses actually played an active part in the valuation.

According to the report of PNB credit investigator Dionisio C. Damasco, Jr. (Exh. R),[17] when respondent Edilberto Natividad bought the properties in 1975 (the year respondent spouses mortgaged them to the bank), he did so for only ₱10,000.00. Yet, a few months later, Edilberto Natividad obtained a loan from petitioner PNB for ₱34,000.00,[18] giving the same properties as collateral, now appraised at ₱49,000.00. The loan obtained was thus 69% of the appraised value of the collateral.

It seems that the increase in value of the properties from ₱10,000.00 to ₱49,000.00 in one year was due to their reclassification from agricultural to residential.[19] In his testimony, respondent Edilberto Natividad facetiously denied any knowledge why the Assessors' Office made a change in the classification of his properties from agricultural to residential.[20]

As the person most likely to benefit from the reclassification, it is probable that he was the one who in fact declared the properties

[16] *Republic of the Philippines v. Garcia*, 91 Phil. 46, 49 (1952).

[17] Folder of Exhibits, p. 56.

[18] TSN, p. 9, April 2, 1987.

[19] Indeed, in his testimony, Edilberto Natividad, apparently speaking based on his experience as an appraiser of petitioner bank for 10 years, said that unlike in the case of agricultural land, the market value is considered in the appraisal of residential land. TSN, p. 8, April 2, 1987.

[20] TSN, p. 11, Feb. 3, 1989.

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as residential to the Municipal Assessor's Office and had them assessed as such. Edilberto Natividad was formerly an appraiser of petitioner PNB.[21] More than anyone else, therefore, he knew that his chances of obtaining a substantial loan were directly related to the value of the properties he offered as collateral. In fact, he admitted that he subdivided the lots after acquiring them from Esperidion Cabanayan, Sr. and because of that the same were classified as residential.[22] The following testimony of Edilberto Natividad is revealing:

[COURT]

Q- I would like to ask this question. What was the original classification of this property before it was classified as residential property?

A- All lots there are formerly classified as agricultural lands.

Q- The question of the Court is when was it reclassified as residential.

A- I do not remember, Your Honor.

COURT:

Q- Was it immediately when you obtained the loan or was it after you obtained the loan?

A- I don't remember, Your Honor.

Q- Don't you have records counsel when the property was reclassified as residential.

ATTY. CAMITAN [counsel for petitioner PNB]:

According to the direct examination testimony of the witness, it was classified as residential when it was used as a collateral of the loan, Your Honor.

COURT:

That is what the Court is asking. . .

Q- The Court wants to know if the reclassification was effected immediately before the loan was acquired or after the loan was acquired because that is very material.

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[21] TSN, p. 4, April 2, 1987.

[22] TSN, p. 15, April 2, 1987.

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A- These lots were classified as residential before we obtained a loan as evidence[d] by the subdivision plan before we submitted to the Assessor's Office. I now remember that these lots were classified before we obtained the loan, Your Honor.

COURT:

Proceed, counsel.

ATTY. CAMITAN:

Q- Is it not true that you have classified residential in order to obtain your loan?

A- It is for the Philippine National Bank to determine whether it is approved whether they approve the loan or not . . .

ATTY. CAMITAN:

Q- After the loan was approved you received the amount, did you introduce improvements to the lots in order to obtain the loan.

A- No, I have plan in the future that these lots are for the construction of these small houses to be used by the employees of the municipality of Sta. Maria which is a project of the government to build and build. At that time we don't have the money yet but this time I can now introduce improvements like buildings, houses in that property based on the lending program of the government.

Q- Until now, no houses yet built.

A- Not yet, ma'am.[23]

That the properties were classified as residential way back in 1975 but until 1989 not a single house had been built thereon and that they continued to be planted to agricultural crops like the surrounding areas which were agricultural[24] highlight the irregularity of the first appraisal report (Exh. 1)[25] by PNB appraiser D.A. Candoc. This is in fact evident on the face of said report, which states "The propert[ies are] planted to tobacco . . . although [they are] ideal for residential site." Thus, if there appears to be a reason to question the reduced appraisal of the properties when they were

[23] TSN, pp. 14-18, Feb. 3, 1989.

[24] TSN, p. 13, Aug. 28, 1986.

[25] Folder of Exhibits, p. 51.

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offered for sale at auction, there is greater reason to question their original appraisal at ₱49,000.00 which persuaded the bank to give Edilberto Natividad and his wife a loan of ₱34,000.00 which was three times the amount he paid for the properties just months earlier.

Third. Respondent spouses were benefited rather than harmed by the substantially lower reappraised value of their properties. As held in *Velasquez v. Coronel*:[26]

> . . . However, while in ordinary sales for reasons of equity a transaction may be invalidated on the ground of inadequacy of price, or when such inadequacy shocks one's conscience as to justify the courts to interfere, such does not follow when the law gives to the owner the right to redeem, as when a sale is made at public auction, upon the theory that the lesser the price the easier it is for the owner to effect the redemption. And so it was aptly said: "When there is the right to redeem, *inadequacy of price should not be material*, because the judgment debtor may reacquire the property or also sell his right to redeem and thus recover the loss he claims to have suffered by reason of the price obtained at the auction sale."[27]

Indeed, as pointed out by petitioner bank, respondents had several options. They could have participated in the public bidding or exercised their right of redemption or sold such right to redeem or simply settled their debt. However, they did none of these things despite due notice to them. Respondents are thus to blame for their predicament. Their claim of financial distress is not an excuse to evade their clear obligation to the bank.[28]

As to the amount for which respondent spouses should be held liable, the Court of Appeals said that "the remaining balance of [respondents'] loan *before [petitioner] bank decided to foreclose their properties* was ₱64,624.31, including interest, penalties, attorney's fees, and expenses of litigation."[29]

This is not correct. The amount of ₱64,624.31 is the amount of the deficiency claim of the bank as of March 31, 1983 (Exh. D)[30]

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[26] 5 SCRA 985 (1962).

[27] *Id.*, pp. 988-989.

[28] *DBP v. Mirang*, 66 SCRA 141, 145 (1975).

[29] Petition, Annex A; *Rollo*, p. 40. (Italics added)

[30] Records, p. 205.

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before the filing of the present complaint on April 21, 1983.[31] To the balance of ₱60,635.63 left after applying petitioner bank's winning bid of ₱7,000.00, the bank added interest, penalties, attorney's fees, and other charges totalling ₱3,988.68. This is in accordance with the terms of the promissory note.[32]

Petitioner also asked in its complaint[33] for attorney's fees equal to 10% of the total amount due as of the time of payment, litigation expenses, and costs for purposes of the present action. The claim is proper. The proceedings for foreclosure is extrajudicial and summary in nature, while that for the deficiency is judicial. Hence, the efforts exerted by the lawyer in both should be recognized.[34] Both the deed of mortgage (Exh. B)[35] and the promissory note (Exh. A)[36] provide for recovery of attorney's fees. Indeed, the latter provides that

> Should it become necessary to collect this note through an attorney-at-law, I/we hereby expressly agree to pay, jointly and severally ten per cent (10%) of the total amount due on this note as attorney's fees which in no case shall be less than ₱100.00 *exclusive of all fees allowed by law stipulated in the contract of real estate mortgage.*[37]

WHEREFORE, the decision of the Court of Appeals is REVERSED and respondent spouses Edilberto and Elena Natividad are ordered to pay petitioner Philippine National Bank the amount of ₱64,624.31 with interest thereon at the legal rate of twelve percent (12%) per annum from March 31, 1983 until fully paid and ₱6,462.43 in attorney's fees and expenses of litigation. No pronouncement as to costs.

SO ORDERED.

Bellosillo (Chairman), Quisumbing, and *Buena, JJ.,* concur. *Puno, J.,* on official leave.

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[31] Per stamp on copy of the complaint, *id.*, p. 7.
[32] See *DPB v. Tomeldan*, 101 SCRA 171, 175 (1980).
[33] Petition, p. 3; *Rollo*, p. 12.
[34] See *Prudential Bank v. Martinez*, 189 SCRA 612, 617 (1990).
[35] Records, p. 201-A.
[36] *Id.*, p. 200.
[37] *Ibid.* (Italics added)