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On a final note, the Court has ruled time and again that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality by the courts when supported by substantial evidence and affirmed by the CA, in the exercise of its expanded jurisdiction to review findings of the National Labor Relations Commission.

WHEREFORE, premises considered, the petition is **DENIED**. The Decision dated November 5, 2012 of the Court of Appeals in CA-G.R. SP No. 115796 is hereby **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Peralta, Perlas-Bernabe, and *Caguioa, JJ.*, concur.

SECOND DIVISION

[G.R. No. 208638. January 24, 2018]

SPOUSES FRANCISCO ONG and BETTY LIM ONG, and SPOUSES JOSEPH ONG CHUAN and ESPERANZA ONG CHUAN, *petitioners, vs.* **BPI FAMILY SAVINGS BANK, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; CONTRACTS; PERFECTED BY MERE CONSENT.— As a rule, a contract is perfected upon the meeting of the minds of the two parties. It is perfected by mere consent, that is, from the moment that there is a meeting of the offer and acceptance upon the thing and the cause that constitute the contract. x x x [T]here is no iota of doubt that when BSA

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approved and released the ₱3,000,000.00 out of the original ₱5,000,000.00 credit facility, the contract was perfected. x x x A careful perusal of the records reveal that the credit facility that BSA extended to petitioners was a credit line of ₱20,000,000.00 consisting of a term loan in the sum of ₱15,000,000.00 and a revolving omnibus line of ₱3,000,000.00 to be used in the petitioner's printing business. In separate Letters both dated January 31, 1997, BSA approved the term loan and the credit line. Such approval and subsequent release of the amounts, albeit delayed, perfected the contract between the parties.

2. ID.; ID.; ID.; LOAN; CONSIDERED A RECIPROCAL OBLIGATION WHEREBY THE CREDITOR RELEASES THE FULL LOAN AMOUNT AND THE DEBTOR REPAYS IT WHEN IT BECOMES DUE AND DEMANDABLE.— Loan is a reciprocal obligation, as it arises from the same cause where one party is the creditor and the other the debtor. The obligation of one party in a reciprocal obligation is dependent upon the obligation of the other, and the performance should ideally be simultaneous. This means that in a loan, the creditor should release the full loan amount and the debtor repays it when it becomes due and demandable. In this case, BSA did not only incur delay in releasing the pre-agreed credit line of ₱5,000,000.00 but likewise violated the terms of its agreement with petitioners when it *deliberately* failed to release the amount of ₱2,000,000.00 after petitioners complied with their terms and paid the first ₱3,000,000.00 in full. The default attributed to petitioners when they stopped paying their amortizations on the term loan cannot be sustained by this Court because long before they sent a Letter to BSA informing the latter of their refusal to continue paying amortizations, BSA had already reneged on its obligation to release the amount previously agreed upon, *i.e.*, the ₱5,000,000.00 covered by the credit line.

3. MERCANTILE LAW; CORPORATION CODE; PRIVATE CORPORATIONS; MERGER; THE SURVIVING CORPORATION NOT ONLY ACQUIRES ALL THE RIGHTS, PRIVILEGES AND ASSETS OF THE CONSTITUENT CORPORATION BUT LIKEWISE ACQUIRES THE LIABILITIES AND OBLIGATIONS OF THE LATTER.— BPI insists that it acted in good faith when

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it sought extrajudicial foreclosure of the mortgage and that it was not responsible for acts committed by its predecessor, BSA. Good faith, however, is not an excuse to exempt BPI from the effects of a merger or consolidation x x x. Applying the pertinent provisions of the Corporation Code, BPI did not only acquire all the rights, privileges and assets of BSA but likewise acquired the liabilities and obligations of the latter as if BPI itself incurred it. Moreover, Section 1(e) of the Articles of Merger dated November 21, 2001 provides that all liabilities and obligations of BSA shall be transferred to and become the liabilities and obligations of BPI in the same manner as if it had itself incurred such liabilities or obligations. Pursuant to such merger and consolidation, BPI's right to foreclose the mortgage on petitioner's property depends on the status of the contract and the corresponding obligations of the parties originally involved, that is, the agreement between its predecessor BSA and petitioner. Since BSA incurred delay in the performance of its obligations and subsequently cancelled the omnibus line without petitioners' consent, its successor BPI cannot be permitted to foreclose the loan for the reason that its successor BSA violated the terms of the contract even prior to petitioners' justified refusal to continue paying the amortizations.

4. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; RECIPROCAL OBLIGATIONS; A DEBTOR CANNOT INCUR DELAY UNLESS THE CREDITOR HAS FULLY PERFORMED ITS RECIPROCAL OBLIGATION.— In the case of *Development Bank of the Philippines v. Guariña Agricultural and Realty Development Corp.*, the Court ruled that a debtor cannot incur delay unless the creditor has fully performed its reciprocal obligation x x x. Since the credit facility that BSA extended to petitioners was a credit line total of ₱20,000,000.00, its refusal to release the balance on the omnibus line prevented full performance of its obligation to petitioners. There being no release of the full loan amount, no default could be attributed to petitioners. In other words, foreclosure was premature.

APPEARANCES OF COUNSEL

Cinco Neri Associates for petitioners.
Benedicto and Associates Law Office for respondent.

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D E C I S I O N

REYES, JR., *J.*:

This is a Petition for Review under Rule 45 of the Rules of Court, as amended, seeking to reverse and set aside the Decision[1] dated January 31, 2013 and Resolution[2] dated August 16, 2013 of the Court of Appeals (CA) in CA-G.R. CV No. 92348.

The Facts

Spouses Francisco Ong and Betty Lim Ong and Spouses Joseph Ong Chuan and Esperanza Ong Chuan (collectively referred to as the petitioners) are engaged in the business of printing under the name and style "MELBROS PRINTING CENTER."[3]

Sometime in December 1996, Bank of Southeast Asia's (BSA) managers, Ronnie Denila and Rommel Nayve, visited petitioners' office and discussed the various loan and credit facilities offered by their bank. In view of petitioners' business expansion plans and the assurances made by BSA's managers, they applied for the credit facilities offered by the latter.

Sometime in April 1997, they executed a real estate mortgage (REM) over their property situated in Paco, Manila, covered by Transfer Certificate of Title No. 143457, in favor of BSA as security for a ₱15,000,000.00 term loan and ₱5,000,000.00 credit line or a total of ₱20,000,000.00.

With regard to the term loan, only ₱10,444,271.49 was released by BSA (the amount needed by the petitioners to pay out their loan with Ayala life assurance, the balance was credited to their account with BSA).

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[1] Penned by Associate Justice Francisco P. Acosta, with Associate Justices Fernanda Lampas Peralta and Angelita A. Gacutan concurring; *rollo*, pp. 56-64.

[2] *Id*. at 65.

[3] *Id*. at 11.

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With regard to the ₱5,000,000.00 credit line, only ₱3,000,000.00 was released. BSA promised to release the remaining ₱2,000,000.00 conditioned upon the payment of the ₱3,000,000.00 initially released to petitioners.

Petitioners acceded to the condition and paid the ₱3,000,000.00 in full. However, BSA still refused to release the ₱2,000,000.00. Petitioners then refused to pay the amortizations due on their term loan.

Later on, BPI Family Savings Bank (BPI) merged with BSA, thus, acquired all the latter's rights and assumed its obligations. BPI filed a petition for extrajudicial foreclosure of the REM for petitioners' default in the payment of their term loan.

In order to enjoin the foreclosure, petitioners instituted an action for damages with Temporary Restraining Order and Preliminary Injunction against BPI praying for ₱23,570,881.32 as actual damages; ₱1,000,000.00 as moral damages; ₱500,000.00 as attorney's fees, litigation expenses and costs of suit.

On November 10, 2008, the trial court rendered its Decision,[4] disposing, thus:

> **WHEREFORE**, in view of all the foregoing, the Court hereby resolves in favor of the plaintiffs and against the defendant bank for the latter to pay the former the above-cited sum of Php20,469,498.00 by way of actual damages and Php500,000.00 by way of attorney's fees.
>
> No pronouncement as to costs.
>
> **SO ORDERED.**[5]

BPI thereafter appealed to the CA averring that the court *a quo* erred when it ruled that petitioners were entitled to damages. BPI posited that petitioners are liable to them on the principal balance of the mortgage loan agreement.

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[4] *Id*. at 178-188.

[5] *Id*. at 188.

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The CA reversed the decision of the lower court and ruled in favor of BPI, the dispositive portion of which states:

> **WHEREFORE**, in the light of the foregoing, the assailed Decision dated 10 November 2008 of the Regional Trial Court, Branch 49, Manila, in Civil Case No. 02-105189 is hereby **REVERSED and SET ASIDE**. The Complaint for Damages below is **DISMISSED** for lack of merit.
>
> **SO ORDERED.**

Petitioners filed a Motion for Reconsideration but the same was denied by the CA in a Resolution dated August 16, 2013, *viz.*:

> Finding no new matter of substance which would warrant the modification much less the reversal of the assailed decision, plaintiffs-appellees' motion for reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[6]

Aggrieved, petitioners filed the present petition.

The Issues

I. WHETHER OR NOT THERE WAS ALREADY AN EXISTING AND BINDING CONTRACT BETWEEN PETITIONERS AND BSA WITH REGARD TO THE OMNIBUS CREDIT LINE;

II. WHETHER OR NOT BSA INCURRED DELAY IN THE PERFORMANCE OF ITS OBLIGATIONS;

III. WHETHER OR NOT PETITIONERS ARE ENTITLED TO DAMAGES; and

IV. WHETHER OR NOT BPI CAN FORECLOSE THE MORTGAGE ON THE LAND OF HEREIN PETITIONERS.[7]

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[6] *Id*. at 65.

[7] *Id*. at 21-22.

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Ruling of the Court

The Court finds merit in the petition.

In fine, petitioners contend that the CA in its assailed decision erred in ruling that that there was no perfected contract between the parties with respect to the omnibus credit line and that being so, no delay could be attributed to BPI, the successor-in-interest of BSA. Petitioners likewise pointed out that it was error for the CA to delve into the matter regarding existence or perfection of a contract, especially when such issue was never raised by BPI in any of its pleadings or proceedings in the lower court.

As a rule, a contract is perfected upon the meeting of the minds of the two parties. It is perfected by mere consent, that is, from the moment that there is a meeting of the offer and acceptance upon the thing and the cause that constitute the contract.[8]

In the case of *Spouses Palada v. Solidbank Corporation, et al.*,[9] this Court held that under Article 1934 of the Civil Code, a loan contract is perfected only upon the delivery of the object of the contract. In that case, although therein petitioners applied for a ₱3,000,000.00 loan, only the amount of ₱1,000,000.00 was approved by therein respondent bank because petitioners became collaterally deficient. Nonetheless, the loan contract was deemed perfected on March 17, 1997, the date when petitioners received the ₱1,000,000.00 loan, which was the object of the contract and the date when the REM was constituted over the property.[10]

Applying this to the case at bench, there is no iota of doubt that when BSA approved and released the ₱3,000,000.00 out of the original ₱5,000,000.00 credit facility, the contract was perfected.

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[8] *Traders Royal Bank v. Cuison Lumber Co., Inc., et al.,* 606 Phil. 700, 713 (2009).

[9] 668 Phil. 172 (2011).

[10] *Id.* at 182.

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The conclusion reached by the appellate court that only the term loan of ₱15,000,000.00 was proved to have materialized into an actual contract while the ₱5,000,000.00 omnibus line credit remained non-existent is ludicrous. A careful perusal of the records reveal that the credit facility that BSA extended to petitioners was a credit line of ₱20,000,000.00 consisting of a term loan in the sum of ₱15,000,000.00 and a revolving omnibus line of ₱3,000,000.00 to be used in the petitioner's printing business. In separate Letters both dated January 31, 1997, BSA approved the term loan and the credit line. Such approval and subsequent release of the amounts, albeit delayed, perfected the contract between the parties.

Loan is a reciprocal obligation, as it arises from the same cause where one party is the creditor and the other the debtor.[11] The obligation of one party in a reciprocal obligation is dependent upon the obligation of the other, and the performance should ideally be simultaneous. This means that in a loan, the creditor should release the full loan amount and the debtor repays it when it becomes due and demandable.[12]

In this case, BSA did not only incur delay in releasing the pre-agreed credit line of ₱5,000,000.00 but likewise violated the terms of its agreement with petitioners when it *deliberately* failed to release the amount of ₱2,000,000.00 after petitioners complied with their terms and paid the first ₱3,000,000.00 in full. The default attributed to petitioners when they stopped paying their amortizations on the term loan cannot be sustained by this Court because long before they sent a Letter to BSA informing the latter of their refusal to continue paying amortizations, BSA had already reneged on its obligation to release the amount previously agreed upon, *i.e.*, the ₱5,000,000.00 covered by the credit line.

Article 1170 of the Civil Code enumerates the instances when parties to a contract may be held liable for damages, *viz.*:

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[11] IV Tolentino, *The Civil Code of the Philippines*, p. 175 (1999).

[12] *Subic Bay Metropolitan Authority v. Court of Appeals, et al.*, 690 Phil. 336, 344 (2012).

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Article 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

It bears stressing that petitioners entered into a credit agreement with BSA to enable them to buy machineries and equipment for their printing business. On its face, it can be gleaned that the purpose of the credit agreement with BSA was indeed to assist and finance petitioner's business by way of providing additional funds as working capital or revolving fund.[13]

The direct consequences therefore of the acts of BSA are: the machinery and equipment that were essential to petitioners' business and requisite for its operations had to be procured so late in time and had crippled the printing of school supplies, hence, petitioners were constrained to cancel purchase orders of their clients to petitioners' damage.[14]

BSA claims that the release of the amount covered by the credit line was subject to the "availability of funds" thus only a part of the proceeds of the entire omnibus line was released.

Assuming for the sake of discussion that the funds at the time were insufficient to cover the entire ₱5,000,000.00, BSA should have at least informed petitioners in advance so that the latter could have resorted to other means to secure the amount needed for their printing business. The omnibus line was approved and became effective on January 1997 yet BSA did not allow petitioners to draw from the line until November 1997. Moreover, BSA downgraded petitioners' drawdown to only ₱3,000,000.00 despite the clear wordings of their credit agreement whereby petitioners were allowed to draw any portion or all of the omnibus line not to exceed ₱5,000,000.00. The almost 10 months delay in releasing the amount applied for by petitioners negates good faith on the part of BSA.

BPI insists that it acted in good faith when it sought extrajudicial foreclosure of the mortgage and that it was not

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[13] *Rollo*, p. 183.

[14] *Id*.

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responsible for acts committed by its predecessor, BSA. Good faith, however, is not an excuse to exempt BPI from the effects of a merger or consolidation, *viz.*:

Section 80. *Effects of merger or consolidation.* — The merger or consolidation shall have the following effects:

1. The constituent corporations shall become a single corporation which, in case of merger, shall be the surviving corporation designated in the plan of merge; and, in case of consolidation, shall be the consolidated corporation designated in the plan of consolidation;

x x x x x x x x x

4. The surviving or the consolidated corporation shall thereupon and thereafter possess all the right, privileges, immunities and franchises of each of the constituent corporations; and all property, real or personal, and all receivable due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to each constituent corporation, shall be deemed transferred to and vested in such surviving or consolidated corporation without further act or deed; and

5. **The surviving or consolidated corporation shall be responsible and liable for all the liabilities and obligations of each of the constituent corporations in the same manner as if such surviving or consolidated corporation had itself incurred such liabilities or obligations**; and any pending claim, action, or proceeding brought by or against any of such constituent corporations may be prosecuted by or against the surviving or consolidated corporation. The rights of creditors or liens upon the property of any of such constituent corporations shall not be impaired by such merger or consolidation.

Applying the pertinent provisions of the Corporation Code, BPI did not only acquire all the rights, privileges and assets of BSA but likewise acquired the liabilities and obligations of the latter as if BPI itself incurred it.

Moreover, Section 1(e) of the Articles of Merger dated November 21, 2001 provides that all liabilities and obligations of BSA shall be transferred to and become the liabilities and obligations of BPI in the same manner as if it had itself incurred such liabilities or obligations.[15]

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[15] *Id.* at 307.

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Pursuant to such merger and consolidation, BPI's right to foreclose the mortgage on petitioner's property depends on the status of the contract and the corresponding obligations of the parties originally involved, that is, the agreement between its predecessor BSA and petitioner.

Since BSA incurred delay in the performance of its obligations and subsequently cancelled the omnibus line without petitioners' consent, its successor BPI cannot be permitted to foreclose the loan for the reason that its successor BSA violated the terms of the contract even prior to petitioners' justified refusal to continue paying the amortizations.

The trial court pointed out that based on the evidence presented by petitioners, the latter conformed to the acquisition of the loan precisely because BSA promised them working capital for the expansion of their business, *viz.*:

> Clear from the plaintiffs' evidence actually presented and marked is the fact that plaintiffs conformed to the acquisition of the loan principally upon the promise by BSA that the working capital would be made available to plaintiffs on time for the opening of classes, for plaintiffs to be able to secure their machineries and meet the orders of their clients.[16]

The subsequent refusal of BSA in releasing the maximum amount agreed upon, transgressed the very purpose of petitioners in availing the credit facility. Clearly, given the nature of petitioners' business, time is of the essence as they needed to have the orders ready before opening of classes.

To emphasize the injury caused to the petitioners due to the bank's delay and subsequent refusal to release the omnibus loan, the petitioners testified as follows:

> *Q The fact that the bank did not allow you to avail of the omnibus line, what is the effect to your business?*
> *A Because I have already manufactured the notebooks for St. Michael and I already sent them to supermarkets and family*

[16] *Id.* at 184.

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stores like SM and Gaisano and they have PO coming, I cannot deliver the goods because of lack of funds. They kept calling and confirming about their PO. Because of this my reputation is going down.

(TSN dated November 28, 2002 pp. 28-29)

Witness: And the 4.2 was released... When we originally received the Php 4.2 Million, we could not push through with our plan in our business, sir.

Court: Why?
Witness: Because it was not sufficient and money came to us very late with the lines of our plans, because we are supposed to manufacture notebooks, school items in time for the school opening in June, and it was delayed, your Honor. We continued paying our amortization for two years. We paid almost 7 million.

(TSN dated September 24, 2007 pp. 13 and 14)

Q How important is your working capital to your business?
A: The omnibus line is the most important in the business.

Court: The question is, why is it important?
A: Because I need capital for my business to replenish my supply and to pay the labor and materials

Atty. Cinco: and when you said the proceeds of the omnibus line was released only on November 10, 1997, how did this affect your business?
A: My business suffered badly because I already got the orders from the department stores and book stores.

(TSN dated September 17, 2004 pp.43-44)[17]

The CA, on the other hand, is of the opinion that the delay and damages claimed by the petitioners are mere cloaks to hide their obligations in the mortgage loan agreement.

The Court disagrees.

No evidence was ever presented in the lower courts showing that the petitioners defaulted in paying their amortizations on

[17] *Id.* at 185-186.

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the term loan prior to their refusal which was mainly grounded on BSA's failure to release the amount covered by the omnibus line. Petitioners' continuous payment of amortizations even during the period between January 1997 and November 1997 (when BSA incurred delay in releasing the omnibus line credit) is inconsistent with the appellate court's finding that petitioners intended to hide their obligations in the mortgage loan agreement. Petitioners' refusal to continue paying was only prompted by BSA's refusal to abide by the terms of the contract. Thus, it would be the height of injustice to allow BPI to foreclose on the mortgage despite violation of its predecessor BSA of its principal obligation.

In the case of *Development Bank of the Philippines v. Guariña Agricultural and Realty Development Corp.*,[18] the Court ruled that a debtor cannot incur delay unless the creditor has fully performed its reciprocal obligation, *viz.*:

> It is true that loans are often secured by a mortgage constituted on real or personal property to protect the creditor's interest in case of the default of the debtor. By its nature, however, a mortgage remains an accessory contract dependent on the principal obligation, such that enforcement of the mortgage contract will depend on whether or not there has been a violation of the principal obligation. While a creditor and a debtor could regulate the order in which they should comply with their reciprocal obligations, it is presupposed that in a loan the lender should perform its obligation - the release of the full loan amount - before it could demand that the borrower repay the loaned amount. In other words, Guariña Corporation would not incur in delay before DBP fully performed its reciprocal obligation.[19]

Since the credit facility that BSA extended to petitioners was a credit line total of ₱20,000,000.00, its refusal to release the balance on the omnibus line prevented full performance of its obligation to petitioners. There being no release of the full loan amount, no default could be attributed to petitioners. In other words, foreclosure was premature.

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[18] 724 Phil. 209 (2014).

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

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In *Metropolitan Bank v. Wong*,[20] the Court declared:

> While the law recognizes the right of a bank to foreclose a mortgage upon the mortgagor's failure to pay his obligation, it is imperative that such right be exercised according to its clear mandate. Each and every requirement of the law must be complied with, lest, the valid exercise of the right would end. It must be remembered that the exercise of a right ends when the right disappears, and it disappears when it is abused especially to the prejudice of others.[21]

BPI was remiss in its duty of looking into the transaction involving the mortgage it sought to foreclose. As BSA's successor-in-interest, it cannot feign ignorance of transactions entered into by the former especially when it seeks to benefit from the same by foreclosing the mortgage thereon.

Anent the propriety of awarding damages, the Court upholds the ruling of the trial court that actual damages in the amount of ₱2,772,000.00 is proper. Said amount is the computed total difference in interest paid to other sources and that which should have only been paid to BSA had the latter complied with the terms of the agreement. However, with regard to the claim of damages representing petitioners' unrealized profits of ₱23,570,881.32, the Court agrees with the CA that petitioners failed to prove with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable, the actual amount of loss. Although petitioners were able to present in evidence purchase orders, company records and checks, the Court agrees with the appellate court that these are insufficient as they are self-serving. Although petitioners claimed that these orders were cancelled, no other evidence was adduced to prove such fact of cancellation.

The law allows the grant of exemplary damages to set an example for the public good. The banking system has become an indispensable institution in the modern world and plays a vital role in the economic life of every civilized society. Whether

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[20] 412 Phil. 207 (2001).

[21] *Id.* at 220.

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as mere passive entities for the safe-keeping and saving of money or as active instruments of business and commerce, banks have attained an ubiquitous presence among the people, who have come to regard them with respect and even gratitude and most of all, confidence. For this reason, banks should guard against injury attributable to negligence or bad faith on its part.[22] Thus, the Court finds it proper to likewise award exemplary damages in the amount of ₱100,000.00.

Finally, as to the matter concerning attorney's fees, the Court finds the ₱500,000.00 awarded by the trial court to be excessive and should accordingly be reduced to ₱300,000.00.

WHEREFORE, in light of the foregoing, the petition is hereby **GRANTED**. The Decision dated January 31, 2013 of the Court of Appeals in CA-G.R. CV No. 92348 is hereby **REVERSED** and **SET ASIDE.** The questioned extrajudicial foreclosure of real estate mortgage is likewise declared **VOID**. Respondent BPI Family Savings Bank, Inc. is hereby **ORDERED** to pay petitioners Spouses Francisco Ong and Betty Lim Ong and Spouses Joseph Ong Chuan and Esperanza Ong Chuan the amount of ₱2,772,000.00 as actual or compensatory damages; ₱100,000.00 as exemplary damages; ₱300,000.00 as attorney's fees; and interest of six percent (6%) *per annum* on all the amounts of damages reckoned from the finality of this decision.

SO ORDERED.

Carpio (Chairperson), Bersamin, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

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[22] *Cangungun v. Planters Development Bank*, 510 Phil. 51, 65 (2005).