

## SECOND DIVISION

**[ G.R. No. 133632, February 15, 2002 ]**

**BPI INVESTMENT CORPORATION, PETITIONER, VS. HON. COURT  
OF APPEALS AND ALS MANAGEMENT & DEVELOPMENT  
CORPORATION, RESPONDENTS.**

### DECISION

**QUISUMBING, J.:**

This petition for certiorari assails the decision dated February 28, 1997, of the Court of Appeals and its resolution dated April 21, 1998, in CA-G.R. CV No. 38887. The appellate court affirmed the judgment of the Regional Trial Court of Pasig City, Branch 151, in (a) Civil Case No. 11831, for foreclosure of mortgage by petitioner BPI Investment Corporation (BPIIC for brevity) against private respondents ALS Management and Development Corporation and Antonio K. Litonjua,<sup>[1]</sup> consolidated with (b) Civil Case No. 52093, for damages with prayer for the issuance of a writ of preliminary injunction by the private respondents against said petitioner.

The trial court had held that private respondents were not in default in the payment of their monthly amortization, hence, the extrajudicial foreclosure conducted by BPIIC was premature and made in bad faith. It awarded private respondents the amount of P300,000 for moral damages, P50,000 for exemplary damages, and P50,000 for attorney's fees and expenses for litigation. It likewise dismissed the foreclosure suit for being premature.

The facts are as follows:

Frank Roa obtained a loan at an interest rate of 16 1/4% per annum from Ayala Investment and Development Corporation (AIDC), the predecessor of petitioner BPIIC, for the construction of a house on his lot in New Alabang Village, Muntinlupa. Said house and lot were mortgaged to AIDC to secure the loan. Sometime in 1980, Roa sold the house and lot to private respondents ALS and Antonio Litonjua for P850,000. They paid P350,000 in cash and assumed the P500,000 balance of Roa's indebtedness with AIDC. The latter, however, was not willing to extend the old interest rate to private respondents and proposed to grant them a new loan of P500,000 to be applied to Roa's debt and secured by the same property, at an interest rate of 20% per annum and service fee of 1% per annum on the outstanding principal balance payable within ten years in equal monthly amortization of P9,996.58 and penalty interest at the rate of 21% per annum per day from the date the amortization became due and payable.

Consequently, in March 1981, private respondents executed a mortgage deed containing the above stipulations with the provision that payment of the monthly amortization shall commence on May 1, 1981.

On August 13, 1982, ALS and Litonjua updated Roa's arrearages by paying BPIIC the sum of P190,601.35. This reduced Roa's principal balance to P457,204.90 which, in turn, was liquidated when BPIIC applied thereto the proceeds of private respondents' loan of P500,000.

On September 13, 1982, BPIIC released to private respondents P7,146.87, purporting to be what was left of their loan after full payment of Roa's loan.

In June 1984, BPIIC instituted foreclosure proceedings against private respondents on the ground that they failed to pay the mortgage indebtedness which from May 1, 1981 to June 30, 1984, amounted to Four Hundred Seventy Five Thousand Five Hundred Eighty Five and 31/100 Pesos (P475,585.31). A notice of sheriff's sale was published on August 13, 1984.

On February 28, 1985, ALS and Litonjua filed Civil Case No. 52093 against BPIIC. They alleged, among others, that they were not in arrears in their payment, but in fact made an overpayment as of June 30, 1984. They maintained that they should not be made to pay amortization before the actual release of the P500,000 loan in August and September 1982. Further, out of the P500,000 loan, only the total amount of P464,351.77 was released to private respondents. Hence, applying the effects of legal compensation, the balance of P35,648.23 should be applied to the initial monthly amortization for the loan.

On August 31, 1988, the trial court rendered its judgment in Civil Case Nos. 11831 and 52093, thus:

WHEREFORE, judgment is hereby rendered in favor of ALS Management and Development Corporation and Antonio K. Litonjua and against BPI Investment Corporation, holding that the amount of loan granted by BPI to ALS and Litonjua was only in the principal sum of P464,351.77, with interest at 20% plus service charge of 1% per annum, payable on equal monthly and successive amortizations at P9,283.83 for ten (10) years or one hundred twenty (120) months. The amortization schedule attached as Annex "A" to the "Deed of Mortgage" is correspondingly reformed as aforestated.

The Court further finds that ALS and Litonjua suffered compensable damages when BPI caused their publication in a newspaper of general circulation as defaulting debtors, and therefore orders BPI to pay ALS and Litonjua the following sums:

- a) P300,000.00 for and as moral damages;
- b) P50,000.00 as and for exemplary damages;
- c) P50,000.00 as and for attorney's fees and expenses of litigation.

The foreclosure suit (Civil Case No. 11831) is hereby DISMISSED for being premature.

Costs against BPI.

SO ORDERED. <sup>[2]</sup>

Both parties appealed to the Court of Appeals. However, private respondents' appeal was dismissed for non-payment of docket fees.

On February 28, 1997, the Court of Appeals promulgated its decision, the dispositive portion reads:

**WHEREFORE**, finding no error in the appealed decision the same is hereby AFFIRMED in toto.

SO ORDERED.<sup>[3]</sup>

In its decision, the Court of Appeals reasoned that a simple loan is perfected only upon the delivery of the object of the contract. The contract of loan between BPIIC and ALS & Litonjua was perfected only on September 13, 1982, the date when BPIIC released the purported balance of the P500,000 loan after deducting therefrom the value of Roa's indebtedness. Thus, payment of the monthly amortization should commence only a month after the said date, as can be inferred from the stipulations in the contract. This, despite the express agreement of the parties that payment shall commence on May 1, 1981. From October 1982 to June 1984, the total amortization due was only P194,960.43. Evidence showed that private respondents had an overpayment, because as of June 1984, they already paid a total amount of P201,791.96. Therefore, there was no basis for BPIIC to extrajudicially foreclose the mortgage and cause the publication in newspapers concerning private respondents' delinquency in the payment of their loan. This fact constituted sufficient ground for moral damages in favor of private respondents.

The motion for reconsideration filed by petitioner BPIIC was likewise denied, hence this petition, where BPIIC submits for resolution the following issues:

I. WHETHER OR NOT A CONTRACT OF LOAN IS A CONSENSUAL CONTRACT IN THE LIGHT OF THE RULE LAID DOWN IN *BONNEVIE VS. COURT OF APPEALS*, 125 SCRA 122.

II. II. WHETHER OR NOT BPI SHOULD BE HELD LIABLE FOR MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES IN THE FACE OF IRREGULAR PAYMENTS MADE BY ALS AND OPPOSED TO THE RULE LAID DOWN IN *SOCIAL SECURITY SYSTEM VS. COURT OF APPEALS*, 120 SCRA 707.

On the first issue, petitioner contends that the Court of Appeals erred in ruling that because a simple loan is perfected upon the delivery of the object of the contract, the loan contract in this case was perfected only on September 13, 1982. Petitioner claims that a contract of loan is a consensual contract, and a loan contract is perfected at the time the contract of mortgage is executed conformably with our ruling in *Bonnevie v. Court of Appeals*, 125 SCRA 122. In the present case, the loan contract was perfected on March 31, 1981, the date when the mortgage deed was executed, hence, the amortization and interests on the loan should be computed from said date.

Petitioner also argues that while the documents showed that the loan was released only on August 1982, the loan was actually released on March 31, 1981, when BPIIC issued a cancellation of mortgage of Frank Roa's loan. This finds support in the registration on March 31, 1981 of the Deed of Absolute Sale executed by Roa in