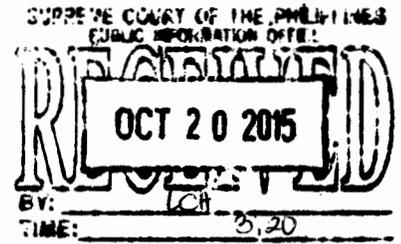




Republic of the Philippines
Supreme Court
 Manila



FIRST DIVISION

**SPOUSES OSCAR AND GINA
 GIRONELLA,**

Petitioners,

G.R. No. 194515

Present:

SERENO, *C.J.*,
Chairperson,
 LEONARDO-DE CASTRO,
 BERSAMIN,
 PEREZ, and
 PERLAS-BERNABE, *JJ.*

- versus -

PHILIPPINE NATIONAL BANK,
 Respondent.

Promulgated:

SEP 16 2015

X-----X

DECISION

PEREZ, J.:

We have here a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision¹ dated 27 August 2010 of the Court of Appeals (CA) in CA-G.R. CV No. 83870 which reversed and set aside the Decision² of the Regional Trial Court (RTC), Branch 44, Dagupan City in Civil Case No. 2000-0099-D. The RTC granted the complaint of petitioners, the Spouses Oscar and Gina Gironella (Spouses Gironella), against respondent Philippine National Bank (PNB) for: (1) the proper construction of events between the parties relative to the proposed Restructuring Agreement; (2) fraud, gross negligence, and/or at the very least, abuse of right under Article 19, 20 and 21 of the Civil Code; and (3) corollary thereto,

¹ *Rollo*, pp. 48-61; Penned by Associate Justice Samuel H. Gaerlan with Associate Justices Ramon R. Garcia and Ricardo R. Rosario concurring.
² *Id.* at 63-69; Penned by Judge Crispin C. Laron.

payment of actual and compensatory damages, moral damages, attorney's fees and litigation expenses.

First, the bare and undisputed facts.

In separate Credit Agreements respectively dated 11 November 1991 and 16 January 1992, the Spouses Gironella obtained two (2) loans from PNB in the amounts of Php7,500,000.00 and Php2,000,000.00 for the construction of the Dagupan Village Hotel and Sports Complex. The loans were co-terminus, both payable on installments and secured by the same real estate mortgage over a parcel of land covered by Transfer Certificate of Title (TCT) No. 56059 in favor of the creditor, PNB.

In May 1992, seeking to expand their hotel operations, the Spouses Gironella again applied for another loan with PNB in the amount of Php5,800,000.00 for the construction of a restaurant bar and the purchase of a generator set.

From these front events, the dealings between the parties turned into the present case.

The Spouses Gironella began to default in paying their prior two (2) loans. They would aver, in their complaint until this petition, that their default in payment is attributable to PNB whose representatives and officers made them believe that their Php5,800,000.00 loan application would be approved and directed them to proceed with their expansion plans. To that end and with the full knowledge of the PNB's officers and representatives, the Spouses Gironella used the income generated by the hotel for the construction of the restaurant bar and purchase of the generator set while the Php5,800,000.00 loan was pending and still being processed. In their Complaint, the Spouses Gironella alleged:

[PNB's] officers and representatives gave their assurance to the [Spouses Gironella] that the said loan will be approved by [PNB] and even directed the [Spouses Gironella] to make use of the funds being generated by Dagupan Village Hotel for the said purposes, which the [Spouses Gironella] did, but seriously affected the servicing of their first loan. [The Spouses Gironella] then proposed a restructuring of their first loan and after a series of meetings, offers and counter offers, the [Spouses Gironella] accepted the offer of [PNB] to their proposed program (*sic*) to

restructure the loan which for all intents and purposes was already perfected.³

From the period of February 1993 to 2 October 1995, the Spouses Gironella paid a total of Php4,219,000.00 on their first two loans of Php9,500,000.00. In January and April 1998, the Spouses Gironella likewise paid PNB Php1,000,000.00 and Php1,650,000.00. They maintain that all these payments were made to effect the restructuring of their loans with PNB.

Meanwhile, in separate instances, on 29 May 1996 and 17 April 1998, while the parties were negotiating and discussing the restructuring of the Spouses Gironella's loans, PNB made a couple of attempts to foreclose the mortgaged property. It filed a Petition for the Extra-Judicial Foreclosure thereof and subsequently, a Notice of Extra-Judicial Foreclosure Sale. However, the final foreclosure of the mortgaged property was stalled because of the continuing negotiations between the parties for the restructuring of the loans.

By the year 2000, negotiations for the restructuring of the Spouses Gironella's loans was still ongoing and remained indefinite. On 25 January 2000, after several exchange of correspondence, PNB wrote the Spouses Gironella and proposed, thus:

May we now have your written final conformity with the proposed restructuring of your account by way of:

Capitalization of the ₱9,485,620.00, part of the accrued interest as of December 14, 1999 for consolidation with the outstanding ₱9,500,000.00 unpaid principal to aggregate ₱14,380,000.00;

Restructuring of this ₱14,380,000.00 into a fully secured 10 year term loan payable quarterly under the following scheme;

- grace period on the payment of the principal only for Eight (8) quarters.
- amortization for the 1st to 8th quarters be based on accrued interest due.
- amortization from the 9th up to the 39th quarter to be based on a 15-year payment scheme with balloon payment on the 40th quarter.

³

Id. at 64.

Restructuring of ₱8,120,000.00, the other part of the accrued interest as of December 14, 2000, on clean basis to be payable quarterly for five (5) years with amortization from 1st to 19th quarters based on a 15-year payment scheme and balloon payment on the 20th quarter.

Interest, net of capitalization, to be paid from December 14, 1999 up to date of implementation,

This proposed restructuring is still subject for evaluation and approval of higher management and therefore tentative in nature.⁴
(Emphasis Supplied)

In a letter dated 7 February 2000, the Spouses Gironella gave a qualified acceptance of PNB's proposed restructuring, specifically referring to specific terms in the 25 January 2000 proposal of PNB.

However, in its 8 March 2000 letter, PNB rejected finally the counter offer of the Spouses Gironella for the restructuring of their loan.

On 25 July 2000, PNB re-filed its Petition for Extra-Judicial Foreclosure of the mortgaged property.

Forthwith, the Spouses Gironella filed the Complaint before the RTC with prayer for issuance of a Temporary Restraining Order (TRO) and preliminary injunction to enjoin enforcement of the original credit agreements, and security therefor, between the parties. Effectively, the Spouses Gironella sought to enjoin the foreclosure of the mortgaged property.

On 4 and 28 September 2000, the RTC issued the prayed for TRO and Writ of Preliminary injunction.

Subsequently, the RTC granted the Complaint of the Spouses Gironella ruling that there was a perfected and binding restructured credit agreement, the terms contained in the 25 January 2000 and 7 February 2000 written exchanges of the parties:

⁴ Id. at 49-50.



WHEREFORE, judgment is rendered in favor of [petitioners] Oscar Gironella and Gina F. Gironella and against [respondent] Philippine National Bank, as follows:

1. On the first and third causes of action, judgment is rendered ordering [PNB] to pay [the Spouses Gironella], the following:

a) ₱5,000,000.00 and ₱100,000.00 a month as actual and compensatory damages;

b) ₱2,000,000.00 as moral damages;

c) ₱500,000.00 as and for Attorney's fees, plus ₱10,000.00 for every conference or hearing as Appearance Fees; and

d) ₱250,000.00 as litigation expenses.

2. On the second cause of action, the [c]ourt declares the restructuring of the subject loan pursuant to the letter of [PNB] dated January 25, 2000, Exhibit U for [the Spouses Gironella], and Exhibit 2 for [PNB], and [the Spouses Gironella's] letter dated February 7, 2000, Exhibit V for the [Spouses Gironella], and Exhibit 3 for [PNB], as perfected and binding upon the parties.

[PNB] is ordered to pay the costs of suit.⁵

On Motion for Partial Reconsideration and/or Clarification filed by the Spouses Gironella, the RTC clarified that the payment of Php100,000.00 a month as actual and compensatory damages is reckoned from the filing of the Amended Complaint on 25 September 2002. In addition, the RTC declared permanent the writ of preliminary injunction it had previously issued, effectively enjoining the enforcement of the original credit agreements and the accessory contract, the real estate mortgage over the land covered by TCT No. 56059.

Posthaste, PNB appealed to the CA questioning the trial court's ruling. PNB argued that the exchange of correspondence between the parties, specifically the 25 January 2000 and 7 February 2000 letters, did not constitute a perfected and binding restructuring agreement since there was no express acceptance by either party of the other's counter-offer. PNB averred that it, in fact, finally rejected the restructuring proposal of the Spouses Gironella on 8 March 2000.

⁵ Id. at 69.

The appellate court granted the appeal of PNB and reversed the ruling of the trial court. The CA ruled that the Spouses Gironella, apart from their bare allegations, failed to present evidence required in civil cases, *i.e.* by a preponderance of evidence, to establish their claim that PNB fraudulently and in gross negligence and/or, in abuse of right, gave them false hopes and assurances that their third loan would be approved in violation of Articles 19, 20 and 21 of the Civil Code thereby entitling them to damages. The appellate court ruled, thus:

In civil cases, he who alleges a fact has the burden of proving it by a preponderance of evidence. Aside from the surmises of [the Spouses Gironella] that they were given false hope and assurances by [PNB's] officers, the [Spouses Gironella] in this case failed to show proof preponderant enough to sway this [c]ourt in their favor.

As compared to the other transactions and negotiation entered into between the parties herein which were very much documented, the [Spouses Gironella] failed to present any documentary evidence relevant to their claims of fraud, gross negligence, and abuse of right against the [PNB's] officers. The records of the instant case are wanting of any proof that would substantiate the [Spouses Gironella's] claim that they were assured by [PNB's] officers that the additional loan application will be approved and that it was agreed upon that the income of the hotel will be used for the construction of the disco-restaurant and the purchase of the generator set for the meantime.

It must also be noted that [the Spouses Gironella] contracted two previous loans from [PNB] even before the additional loan subject of this case was applied for. Thus, not being their first time to enter into a loan with a bank, the [Spouses Gironella] are already very much aware of the process being observed in obtaining a loan from such kind of institution. Gina Gironella even wrote in her 7 August 1992 letter to Mr. Alfredo S. Besa, Manager of the PNB Dagupan Branch, that:

Dear Mr. Besa:

I was very much elated over the information relayed to me by my father, thru our Resident Manager, William Crossly, regarding the profound concern and interest shown by your Vice-President for Northern Luzon Branches Pedrito D. Torres towards the Dagupan Village Hotel and Sports Center. I understand that VP Torres was also convinced that the construction of the additional function hall and night club would, indeed, upgrade the revenue-earning capacity of the hotel, thus reportedly giving his assent for the immediate commencement of the project.

In this connection, therefore, may I reiterate our appeal manifested in our previous letters for the approval of our additional loan application with which to underwrite

the above project which was started almost two months ago, and the purchase of a 125 ... generating set.

In the above letter, [petitioner] Gina Gironella appears to be mindful that a formal approval is necessary for their application to be considered as finally approved. Thus, when the [Spouses Gironella] undertook to initiate the construction of the disco-restaurant and the purchase of the generator set even without the formal approval of their additional loan, the [Spouses Gironella] did it at their own risk.⁶

On the finding of the trial court that the correspondence between the parties embodied in the 25 January 2000 and 7 February 2000 letters of PNB and the Spouses Gironella, respectively, constituted the restructuring agreement, the appellate court found that there was no final agreement reached by the parties where the offer was certain and acceptance thereof by the other party was absolute. The appellate court held that, in this case, a qualified acceptance equated to a counter-offer and, at that point, there was no absolute and unqualified acceptance which is identical in all respects with that of the offer so as to produce consent or meeting of the minds.

Hence, this appeal by *certiorari* of the Spouses Gironella insisting on the correctness of the trial court's ruling.

We deny the petition and affirm the appellate court's ruling.

The Spouses Gironella claim fraud, gross negligence and/or, at the very least, abuse of right in violation of Articles 19, 20 and 21 of the Civil Code when PNB, essentially, twice did not approve their loan applications: (1) the additional loan of Php5,800,000.00 for their businesses' expansion plans, and (2) restructuring of their original credit agreements, despite purported assurances and representations of approval by PNB's officers and representatives. The Spouses Gironella maintain that these actuations of PNB through its officers and representatives constituted fraud, gross negligence and/or abuse of right in its dealings thus entitling the Spouses Gironella to damages, actual and compensatory, moral, attorney's fees and litigation expenses.

Incredibly, the RTC adopted in full the stance and allegations of the Spouses Gironella, without a shred of evidence or reference thereto in the ratiocination of its ruling:

⁶ Id at 57-58.



It should be noted that [PNB's] act of continuously giving positive assurances to the [Spouses Gironella] and giving them false hopes that the additional loan will be approved and eventually informing them later that the same was disapproved by the higher management is a clear indication of fraud and gross negligence. If it were not for [PNB's] continuous assurances that the loan will be approved, the [Spouses Gironella] would not have participated in the negotiations with PNB officers and representatives, thus dispensing with the preparation and submission of various documents, financial reports and other demands. The [c]ourt agrees with the stand of the [Spouses Gironella] that if it were for [PNB's] directive to direct the use of the funds generated by the hotel to construct [the] disco-restaurant purchase of the generator set (sic), the servicing and/or payment of the original loan should not have been affected. The records would show that [PNB] misled the [Spouses Gironella] into believing that the additional loan of 5.8 Million Pesos would be approved. It should be stated in this connection that the payments for the first loan Php9,500,000.00 would have come from the funds generated by the hotel. There is no doubt that the [Spouses Gironella] applied for an additional loan of P5,800,000.00 for the purpose of constructing the disco-restaurant and purchase of generator set. The hotel fund was used for the above-cited purpose and that was the reason instead of using the same to pay [the Spouses Gironella's] obligation relative to the Php9,500,000.00 loan. [The Spouses Gironella's] acted in good faith when they used the money to construct the disco-restaurant and purchase the generator set because of the false assurances of [PNB] that the amount of Php5,800,000.00 loan would be approved.⁷

The appellate court correctly did not give imprimatur to the foregoing ruling of the trial court given that nowhere therein does the trial court refer to evidence to support its conclusions.

First. As plaintiffs, the Spouses Gironella had the duty, the burden of proof, to present evidence, required by law, on the facts in issue necessary to establish their claim.⁸ The trial court did not even name the bank officers and representatives who gave "false hopes and assurances" to the Spouses Gironella. The trial court could have easily specified the representations and statements of the bank officers and representatives which the Spouses Gironella heavily relied upon. The Spouses Gironella's lack of evidence is further highlighted by the trial court's *non-sequitur* statement that "[i]f it were not for [PNB's] continuous assurances that the loan will be approved, the [Spouses Gironella] would not have participated in the negotiations with PNB officers and representatives, thus dispensing with the preparation and submission of various documents, financial reports and other demands."⁹

⁷

Id. at 67.

⁸

See Section 1, Rule 131 of the Rules of Court.

⁹

Rollo, p. 67.

Second. The foregoing statement fails to take into consideration the three (3) distinct stages of a contract: (1) preparation or negotiation, (2) perfection, and finally, (3) consummation.¹⁰ At that point where the Spouses Gironella were applying for the additional loan of Php5,800,000.00, that involved the negotiation stage for a contract separate from the first two credit agreements which were consolidated into one, secured by the same real estate mortgage over TCT No. 56059, both payable on installment and with the same term. Necessarily, the Spouses Gironella as debtors applying for an additional loan, ought to participate in the negotiations thereof and await PNB's assessment and processing of their additional loan application.

Discussion on the succeeding stages of a contract shall be done *anon* in relation to the alleged restructuring agreement.

Third. We find difficulty in accepting the Spouses Gironella's insistence that PNB's officers and representatives repeatedly assured them that their additional loan will be approved, apparently, without qualification. In approving loans, credit accommodations and guarantees, PNB, as a bank, must still comply with banking laws and conduct business in a safe and sound manner. Ultimately, PNB to comply with the General Banking Act¹¹ as amended, the old statute and precursor to the present General Banking Law,¹² must assess compliance by the Spouses Gironella with specific legal banking requirements such as the Single Borrower's Limit.¹³ Clearly, approval of the Spouses Gironella's additional loan is not contingent solely on the purported representations of PNB's officers as claimed by the former.

Fourth. From these very same bare allegations of the Spouses Gironella, the trial court, in upholding their stance, considered the assurances given by PNB's officers that the additional loan will be approved as the evidence itself of PNB's supposed commission of fraud. In short, the Spouses Gironella proffer as evidence of fraud their own bare allegations which regrettably, the trial court echoed.

We cannot overemphasize that the burden of proof is upon the party who alleges bad faith or fraud.¹⁴ In this case, the Spouses Gironella's bare allegations that PNB's officers assured them that their additional loan will be

¹⁰ *The Insular Life Assurance Company Limited v. Asset Builders Corp.* 466 Phil. 751, 766 (2004).

¹¹ Republic Act No. 337.

¹² Republic Act No. 8791 "An Act Providing for the Regulation of the Organization and Operations of Banks, Quasi-Banks, Trust Entities and for other purposes."

¹³ See Sections 35, 36, 37, 39, and 40 of the General banking Law.

¹⁴ *Ng Wee v. Tankiansee*, 568 Phil. 819, 828 (2008).

approved are mere abstractions of fraud without specifics pointing to the actual commission of fraud.

We thus agree with the disquisition of the appellate court thereon:

In civil cases, he who alleges a fact has the burden of proving it by a preponderance of evidence. Aside from the surmises of [the Spouses Gironella] that they were given false hopes and assurances by [PNB's] officers, the [Spouses Gironella] in this case failed to show proof preponderant enough to sway this [c]ourt in their favor.

As compared to the other transactions and negotiations entered into between the parties herein which were very much documented, the [Spouses Gironella] failed to present any documentary evidence relevant to their claims of fraud, gross negligence, and abuse of right against the [PNB's] officers. The records of the instant case are wanting of any proof that would substantiate the [Spouses Gironella's] claim that they were assured by [PNB's] officers that the additional loan application will be approved and that it was agreed upon that the income of the hotel will be used for the construction of the disco-restaurant and the purchase of the generator set for the meantime.¹⁵

The Spouses Gironella next contend that the parties already had a partially executed, if not perfected and binding, restructuring agreement embodied in their 7 February 2000 letter of acceptance of the offer and proposal contained in PNB's 25 January 2000 letter. As with their first contention on the "false hopes and assurances" purportedly given by PNB's officers and representatives to the Spouses Gironella, the trial court upheld them and found that there was a perfected and binding restructuring agreement between the parties. Moreover, the Spouses Gironella assert that since they have made substantial payments in pursuance of the restructuring agreement, or at the least under a promise of restructuring the loan, there is effectively a partially executed restructuring agreement.

We cannot subscribe to the contention of the Spouses Gironella, albeit upheld by the trial court.

A contract is perfected by mere consent.¹⁶ In turn, consent is manifested by the meeting of the offer and the acceptance upon the thing and

¹⁵*Rollo* p. 57.¹⁶

CIVIL CODE, Article 1315.



the cause which are to constitute the contract.¹⁷ The offer must be certain and the acceptance seasonable and absolute.¹⁸ If qualified, the acceptance would merely constitute a counter-offer¹⁹ as what occurred in this case.

To reach that moment of perfection, the parties must agree on the same thing in the same sense, so that their minds meet as to all the terms.²⁰ They must have a distinct intention common to both and without doubt or difference; until all understand alike, there can be no assent, and therefore no contract. The minds of parties must meet at every point; nothing can be left open for further arrangement. So long as there is any uncertainty or indefiniteness, or future negotiations or considerations to be had between the parties, there is not a completed contract, and in fact, there is no contract at all.²¹

The Spouses Gironella's payments under its original loan account cannot be considered as partial execution of the proposed restructuring loan agreement. They were clearly made during the pendency of the negotiations on the restructuring. Such pendency proves, absence, not presence of an agreement ready for execution. At the time of payments only petitioners' obligation under the original credit agreements were in existence. Indeed, the payment scheme under the proposed restructuring was outlined by PNB only in the letter of 25 January 2000.

Further on this, negotiation begins from the time the prospective contracting parties manifest their interest in the contract and ends at the moment of agreement of the parties. Once there is concurrence of the offer and acceptance of the object and cause, the stage of negotiation is finished.²² This situation does not obtain in the case at bar. The letter dated 25 January 2000 of PNB was qualifiedly accepted by the Spouses Gironella as contained in their 7 February 2000 letter and constituted a counter-offer which PNB ultimately rejected in its 8 March 2000 letter. The surrounding circumstances clearly show that the parties were not past the stage of negotiation for the terms and conditions of the restructured loan agreements.

¹⁷ *Metropolitan Manila Development Authority v. Jancom Environmental Corp.*, 425 Phil. 961, 975 (2002); *Pua v. CA*, 398 Phil. 1064, 1078 (2000).

¹⁸ CIVIL CODE, Article 1319.

¹⁹ *Regal Films, Inc. v. Concepcion*, 414 Phil. 807, 813 (2001).

²⁰ *Batañgan v. Cojuangco*, 78 Phil. 481, 484 (1947). See also *Metropolitan Bank and Trust Company v. Tonda*, 392 Phil. 797, 809 (2000).

²¹ *Moreno, Jr. v. Private Management Office*, 537 Phil. 280, 288 (2006).

²² *Batañgan v. Cojuangco*, supra note 20 at 485.



There was no meeting of the minds on the restructuring of the loans. Thus, the Spouses Gironella's original Php9,500,000.00 loan agreement subsists.

In all, we affirm the appellate court's ruling, PNB is not liable either for fraud, gross negligence or abuse of right. It did not breach any agreement there having been no restructured loan agreement at all that was perfected. Consequently, the PNB is not liable to pay the Spouses Gironella any form of damages.

WHEREFORE, the petition is **DENIED**. The Decision of the Court of Appeals dated 27 August 2010 in CA-G.R. CV No. 83870 is **AFFIRMED**. The Decision and Order dated 23 June 2004 and 28 September 2004 of the Regional Trial Court, Branch 44, Dagupan City are **REVERSED** and **SET ASIDE**. The Amended Complaint of the petitioners, Oscar and Gina Gironella, is **DISMISSED**.

SO ORDERED.


JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice