SPECIAL THIRD DIVISION

G.R. No. 222448 – UNITED COCONUT PLANTERS BANK, Petitioner, **v. EDITHA F. ANG and VIOLETA M. FERNANDEZ,** Respondents.

Promulgated:

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DISSENTING OPINION

LEONEN, *J.*:

I dissent. There exists no valid ground to grant the Motion for Reconsideration and reverse the ruling promulgated on November 24, 2021.

In the original Decision[1] this Court upheld the validity of the foreclosure proceedings despite striking down the provisions on interest payment, declaring them to be null and void for violating the principle of mutuality of contracts:

> As a rule, the right to recover the principal of the loan remains and is not affected by the nullification of the interest imposed. Considering that the right to collect the loan through the foreclosure of the mortgage subsists despite the nullity of the stipulation of usurious interest, the CA erroneously nullified the foreclosure proceedings and auction sale.[2]

Private Development Corporation of the Philippines v. Intermediate Appellate Court[3] explained that when an interest rate is voided for being iniquitous, the unpaid principal remains valid "but the stipulation as to the usurious interest is void, consequently, the debt is to be considered without stipulation as to the interest."[4] Hence, the eventual nullification of the usurious or unconscionable interest rate will not affect the lender's right to be repaid the principal amount[5] and interest.[6]

In *United Coconut Planters Bank v. Spouses Beluso,*[7] the Court, as in the current case, also voided the interest and penalty rates for being one-

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1 *United Coconut Planters Bank v. Ang*, 916 Phil. 482 (2021) [Per J. Carandang, Third Division].

2 *Id.* at 501.

3 288 Phil. 146 (1992) [Per J. Nocon, Second Division].

4 *Id.* at 153.

5 *First Metro Investment Corporation v. Este Del Sol Mountain Reserve, Inc.*, 420 Phil. 902, 918 (2001) [Per J. De Leon, Second Division]

6 *See Advocates for Truth in Lending, Inc. v. Bangko Sentral Monetary Board*, 701 Phil. 483, 501 (2013) [Per J. Reyes, *En Banc*].

7 557 Phil. 326 (2007) [Per J. Chico-Nazario, Third Division].

sided[8] and iniquitous,[9] but it nonetheless upheld the validity of the demand made on the debtor and the propriety of the foreclosure of mortgage. *Spouses Beluso* explained that an excessive demand does not invalidate the demand made, because it remains valid as to the proper amount. Further, an excessive demand is not one of the established grounds to nullify a foreclosure sale, thus:

> Default commences upon judicial or extrajudicial demand. *The excess amount in such a demand does not nullify the demand itself, which is valid with respect to the proper amount.* A contrary ruling would put commercial transactions in disarray, as validity of demands would be dependent on the exactness of the computations thereof, which are too often contested.
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> There being a valid demand on the part of UCPB, albeit excessive, the spouses Beluso are considered in default with respect to the proper amount and, therefore, the interests and penalties began to run at that point.
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> ....
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> We agree with UCPB and affirm the validity of the foreclosure proceedings. Since we already found that a valid demand was made by UCPB upon the spouses Beluso, despite being excessive, the spouses Beluso are considered in default with respect to the proper amount of their obligation to UCPB and, thus, the property they mortgaged to secure such amounts may be foreclosed. Consequently, proceeds of the foreclosure sale should be applied to the extent of the amounts to which UCPB is rightfully entitled.
>
> As argued by UCPB, none of the grounds for the annulment of a foreclosure sale are present in this case. The grounds for the proper annulment of the foreclosure sale are the following: (1) that there was fraud, collusion, accident, mutual mistake, breach of trust or misconduct by the purchaser; (2) that the sale had not been fairly and regularly conducted; or (3) that the price was inadequate and the inadequacy was so great as to shock the conscience of the court.[10] (Citations omitted, emphasis supplied)

The Court *En Banc* in *Advocates for Truth in Lending, Inc. v. Bangko Sentral Monetary Board*[11] then reiterated *Spouses Beluso,* stating that even with an excessive demand due to usurious loan with mortgage, the lender's right to foreclose a mortgage vest upon the borrower's failure to pay the debt due:

> Nonetheless, the nullity of the stipulation of usurious interest does not affect the lender's right to recover the principal of a loan, nor affect the other terms thereof. Thus, in a usurious loan with mortgage, the right to

[8] *Id.* at 341.
[9] *Id.* at 348.
[10] *United Coconut Planters Bank v. Spouses Beluso,* 557 Phil. 326, 346, 350–351 (2007) [Per J. Chico-Nazario, Third Division]
[11] 701 Phil. 483 (2013) [Per J. Reyes, *En Banc*].

> foreclose the mortgage subsists, and this right can be exercised by the creditor upon failure by the debtor to pay the debt due. The debt due is considered as without the stipulated excessive interest, and a legal interest of 12% *per annum* will be added in place of the excessive interest formerly imposed[.][12] (Citation omitted)

This was repeated in *Solid Builders, Inc. v. China Banking Corp.*[13] where the Court emphasized that a nullified usurious interest rate will not affect the other valid terms of the loan nor the lender's right to recover the principal loan amount:

> As debtor-mortgagors, however, SBI and MFII do not have a right to prevent the creditor-mortgagee CBC from foreclosing on the mortgaged properties simply on the basis of alleged "usurious, exorbitant and confiscatory rate of interest." First assuming that the interest rate agreed upon by the parties is usurious, the nullity of the stipulation of usurious interest does not affect the lender's right to recover the principal loan, nor affect the other terms thereof. Thus, **in a usurious loan with mortgage, the right to foreclose the mortgage subsists, and this right can be exercised by the creditor upon failure by the debtor to pay the debt due.**[14] (Citation omitted, emphasis in the original)

The *ponencia* refers to the ruling in *Spouses Andal v. Philippine National Bank,*[15] *Spouses Albos v. Spouses Embisan,*[16] and *Vasquez v. Philippine National Bank*[17] as basis for its reversal of our Decision.

With all due respect, I do not agree that the cited cases support the overturning of our earlier ruling and established jurisprudence.

In *Spouses Andal,* we held that the varying interest rates of 17.5% to 27% per annum not only violated the principle of mutuality of contracts, but were also unconscionable, thus the provisions on interest rates were struck down for being contrary to law and morals. Further, the borrowers were declared not to be in default because of their inability to pay the "arbitrary, illegal and unconscionable interest rates and penalty charges unilaterally imposed by [respondent] bank."[18] *Spouses Andal* stressed:

> It is worth mentioning that both the RTC and the CA are one in saying that "[petitioners-spouses] cannot be considered in default for their inability to pay the arbitrary, illegal and unconscionable interest rates and penalty charges unilaterally imposed by [respondent] bank." This is precisely the reason why the foreclosure proceedings involving petitioners-spouses' properties were invalidated. As pointed out by the

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12 *Id.* at 500–501.
13 708 Phil. 96 (2013) [Per J. Leonardo-De Castro, First Division].
14 *Id.* at 114.
15 722 Phil. 273 (2013) [Per J. Perez, Second Division].
16 748 Phil. 907 (2014) [Per J. Velasco, Jr. Third Division].
17 860 Phil. 922 (2019) [Per J. Caguioa, Second Division].
18 *Spouses Andal v. Philippine National Bank,* 722 Phil. 273, 284 (2013) [Per J. Perez, Second Division].

> CA, "since the interest rates are null and void, [respondent] bank has no right to foreclose [petitioners-spouses'] properties and any foreclosure thereof is illegal...*Since there was no default yet, it is premature for [respondent] bank to foreclose the properties subject of the real estate mortgage contract*."[19] (Citations omitted, emphasis supplied)

On the other hand, in *Spouses Albos* we struck down a 5% monthly simple interest rate, which was eventually compounded after several payment extensions, for being unconscionable and iniquitous. Citing *Heirs of Espiritu*, the Court in *Spouses Albos* nullified the foreclosure sale because the borrowers "were deprived of the opportunity to settle the debt, in view of the overstated amount demanded from them."[20]

Heirs of Espiritu, in turn, nullified the varying unspecified interest rates applied in the loan contract, which averaged at 6.39% per month, for being unconscionable and replaced it with the legal interest rate of 12% per annum. *Heirs of Espiritu* ruled that while the terms of the real estate mortgage remained effective despite the nullity of the unconscionable interest rates, the previous demand of the bloated amount cannot be considered as a valid demand for payment. *Heirs of Espiritu* explains:

> While the terms of the Real Estate Mortgage remain effective, the foreclosure proceedings held on 31 October 1990 cannot be given effect. In the Notice of Sheriff's Sale dated 5 October 1990, and in the Certificate of Sale dated 31 October 1990, the amount designated as mortgage indebtedness amounted to P874,125.00. Likewise, in the demand letter dated 12 December 1989, Zoilo Espiritu demanded from the Spouses Landrito the amount of P874,125.00 for the unpaid loan. *Since the debt due is limited to the principal of P350,000.00 with 12% per annum as legal interest, the previous demand for payment of the amount of P874,125.00 cannot be considered as a valid demand for payment.* For an obligation to become due, there must be a valid demand. Nor can the foreclosure proceedings be considered valid since the total amount of the indebtedness during the foreclosure proceedings was pegged at P874,125.00 which included interest and which this Court now nullifies for being excessive, iniquitous and exorbitant. If the foreclosure proceedings were considered valid, this would result in an inequitable situation wherein the Spouses Landrito will have their land foreclosed for failure to pay an over-inflated loan only a small part of which they were obligated to pay.[21] (Citations omitted, emphasis supplied)

Finally, in *Vasquez* we struck down the unilateral escalation of increased interest rates in a secured loan which caused the original loan amount of PHP 1,400,000.00 to balloon to PHP 2,363,315.40, despite the borrower making regular payments towards the loan obligation.[22] *Vasquez* declared that when "a debtor was not given an opportunity to settle his/her

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[19] *Id.*
[20] *Spouse Albos v. Spouses Embisan,* 748 Phil. 907, 919 (2014) [Per J. Velasco, Jr. Third Division].
[21] *Heirs of Espiritu v. Landrito,* 549 Phil. 180, 193 (2007) [Per J. Chico-Nazario, Third Division].
Vasquez v. Philippine National Bank, 860 Phil. 922, 929–930 (2019) [Per J. Caguioa, Second Division].

debt at the correct amount due to the imposition of a null and void interest rate scheme, no foreclosure proceedings may be instituted"[23] because "the non-payment of the principal loan obligation does not place the debtor in a state of default[.]"[24]

While this statement from *Vasquez* might appear to support the *ponencia*, a closer look shows that the foreclosure proceedings were likewise nullified because of the unconscionable interest rates and not just because the interest rates were voided. It was precisely the overinflated amount that made the Court rule that the debtor was not given a chance to pay the debt at the correct amount. Even in the cases cited in *Vasquez*, the foreclosure proceedings there were nullified because of the iniquitous interest rates which were unilaterally imposed by the lender.[25] *Vasquez* thus declared:

> Hence, based on established jurisprudence, the fact that the interest rate scheme imposed upon Vasquez was null and void inevitably leads to the invalidity of the foreclosure sale. It would be unjust if the foreclosure sale of the subject properties was considered valid, as this would result in an inequitable situation wherein Vasquez would have his properties foreclosed for failure to pay a loan that was *unduly inflated due to the unilateral and one-sided imposition of monetary interest.*[26] (Emphasis supplied)

Spouses Albos, Spouses Andal, Heirs of Espiritu, and *Vasquez* thus instruct that an unconscionable interest rate will prevent the borrower from being informed of the correct amount to be paid, hence, it cannot be said that a valid demand was made, resulting to a substantial defect in the foreclosure proceeding which necessarily entails its nullification.

Such is not the case here.

The provisions on interest rates in the loan contract between petitioner and respondents were struck down for being unilaterally imposed, thereby violating the principle on mutuality of contracts, not because they were unconscionable or iniquitous. We held:

> The subject interest stipulation becomes legally objectionable not simply because the borrower failed to consent to it. Instead, *the stipulation on the adjustment of interest must be nullified because of the probability that an upward adjustment that the bank may impose will result to an unconscionable or usurious interest.*
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> As pointed out by the RTC, taken from whatever vantage point, it is only UCPB that has discretion to impose future interest rate/s on the obligation of Ang and Fernandez. The Manila Reference Rates, Treasury

[23] *Id.* at 949.
[24] *Id.* at 950.
[25] *Id.* at 950–952.
[26] *Id.* at 952.

> Bill Rates, other Market Based Reference Rates are mere references which may not be followed at all by UCPB as these are subject to quarterly review and resetting at the option of the bank. The review and resetting mechanism were also determined to be a vague and indistinct concept solely beneficial to UCPB and prejudicial to the borrowers.[27] (Citation omitted, emphasis supplied)

As it is, *there was no finding that petitioner's imposed interest rates were unconscionable or iniquitous*. Instead, the lower courts found that the setting of interest rates was purely unilateral because petitioner had the full discretion to base the interest rates on any of the following reference rates or not follow them at all: "(1) the prevailing market rate of the Manila Reference Rate; or (2) the Treasury Bill Rates; or (3) other market-based reference rate obtaining at the time of the availment of the loan subject to the quarterly interest review and resetting at the option of the bank."[28]

The Regional Trial Court struck down the loan provisions on interest payment for violating: (a) Articles 1308[29] and 1309[30] of the Civil Code, or the provisions on the mutuality of a contract; and (b) the disclosure provisions of Republic Act 3765 or the Truth in Lending Act because respondents signed blank promissory notes. The dispositive portion of the Regional Trial Court Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
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> 1. Declaring as Null and Void the provisions fixing and/or imposing interest rates as stated in the Credit Agreement, Real Estate Mortgage and Promissory Notes, for being violative of the provisions of Article 1308 and Article 1309 of the New Civil Code of the Philippines and RA 3765 known as the Truth in Lending Act;
> 2. Declaring the five (5) Promissory Notes as NULL and VOID for having violated the provisions of Section 4, paragraphs (5), (6) and (7) of the Truth in Lending Act;
> 3. Declaring the Sale at Public Auction conducted on August 2, 1999 as Null and Void;
> 4. The defendant bank is hereby directed to recompute the total amount of indebtedness of the petitioner based on the interest rate known and agreed by both parties at the time the contract was consummated.[31]

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[27] *United Coconut Planters Bank v. Ang*, 916 Phil. 482, 498 (2021) [Per J. Carandang, Third Division].
[28] *Id.* at 496–497. (Citation omitted)
[29] CIVIL CODE, art. 1308. Article 1308 states, the contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them.
[30] CIVIL CODE, art. 1309. Article 1309 states, the determination of the performance may be left to a third person, whose decision shall not be binding until it has been made known to both contracting parties.
[31] *United Coconut Planters Bank v. Ang*, 916 Phil. 482, 486 (2021) [Per J. Carandang, Third Division].

Upon motion for reconsideration, the Regional Trial Court modified its Decision and upheld the validity of the sale at public auction. The dispositive portion of the Regional Trial Court's resolution reads:

> WHEREFORE, premises considered, judgment is rendered:
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> 1. Declaring the sale at **public auction conducted on August 2, 1999 to be valid;**
> 2. Petitioners are liable to respondent bank the principal amount of P16 Million Pesos plus compounded legal interest of 12% per annum and penalty of 12% per annum on the amount due from date of demand. Respondent bank is ordered to deduct from the liability of petitioners the amount of payments in the amount of P2,349,514.95. The proceeds from the auction sale in the amount of P21,985,000.00 less expenses for the auction sale and attorney's fees shall be applied to and deducted from petitioner's indebtedness.
>
> SO ORDERED.[32]

On appeal, the Court of Appeals upheld the finding of the invalidity of the interest rate provisions for violating the principle of mutuality of contracts. However, it partially reversed the Regional Trial Court by nullifying the auction sale. The dispositive portion of the Court of Appeals Decision reads:

> WHEREFORE, the instant appeal is hereby PARTIALLY GRANTED. It is hereby declared:
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> 1. That the **five (5) Promissory Notes** are **valid.**
> 2. That the **provisions fixing and/or imposing interest rates are NULL and VOID** for being violative of the provisions of Article 1308 of the New Civil Code;
> 3. That the **sale at public auction conducted on August 2, 1999** is **NULL** and **VOID;**
> 4. The case is **REMANDED** to the trial court for proceedings to determine, based on evidence already on record and other evidence it may admit in the proceedings before it, the total indebtedness of the appellants. It shall be computed by deducting the amount already paid on the principal obligation plus legal interest of twelve percent (12%) per annum computed from extrajudicial demand until June 30, 2013, and six percent (6%) per annum from July 1, 2013 until fully paid.
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> SO ORDERED.[33]

The Court of Appeals denied petitioner's motion for reconsideration.[34]

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[32] *Id.* at 487.
[33] *Id.* at 488–489.
[34] *Id.* at 490.

Clearly then, there was no finding that the unilaterally imposed interest rates led to a bloated or unconscionable total loan amount, hence, a proper demand was made on respondents leading to the validity of the foreclosure proceedings and sale at public auction.

We stated in our challenged Decision that our ruling in *Spouses Andal* should not be indiscriminately applied to all foreclosure of mortgaged properties involving defaulting debtors due to iniquitous interest rates because "[t]his restrictive and unjust construction of the Court's ruling in *Andal* and in other similar cases will weaken the public's confidence in the banking industry."[35] We then cautioned that the peculiar circumstances inherent in every case must be taken into account when ruling on the validity of foreclosure proceedings.[36]

ACCORDINGLY, I vote to **DENY** the Motion for Reconsideration.

MARVIC M.V.F. LEONEN
Senior Associate Justice

[35] *Id.* at 505.
[36] *Id.* at 501–502.