



the Accommodation shall be used exclusively by CLIENT to partly finance the renovation of Queen's Beach Resort and for [additional] working capital for resort operation and foreign exchange business."<sup>4</sup> Ang and Fernandez availed the credit line payable in five years through 20 quarterly amortizations of ₱800,000.00 starting July 1, 1997 up to April 30, 2002.<sup>5</sup> The loans obtained by them are as follows:

<b>Date</b>	<b>Loan Amount</b>	<b>Peso Equivalent</b>	<b>Promissory Note (PN)</b>
April 30, 1997	US\$549,867.00 @ Php 26.37/ USDS 1.00	Php 14,554,979.49	PN 8316-97-200012-8
June 2, 1997	US\$ 18,889.00 @ Php 26.37/ USDS 1.00	Php 498,102.93	PN 8316-97-20020-9
June 4, 1997	US\$ 11,333.00 @ Php 26.37/ US\$ 1.00	Php 298,851.21	PN 8316-97-20021-7
June 17, 1997		Php 350,000.00	PN 8316-97-00280-6
June 25, 1997		Php 350,000.00	PN 8316-97-00289-0
<b>Total Principal Obligation</b>		<b>Php 16,054,955.83</b>	

The loans were secured by several real estate mortgages including:

<b>Date</b>	<b>Amount Secured</b>	<b>Corresponding Security</b>
August 1, 1995	Php 2,200,000.00	Transfer Certificate of Title (TCT) No. T-20640
October 10, 1995	Php 4,000,000.00	Tax Declaration (TD) No. 93-011-0394/ 93-011-0274
April 27, 1995	Php 1,800,000.00	TCT No. 20640/ TD No. 93-011-0394
December 29, 1995	Php 4,000,000.00	TD No. 1911/1978/1979 TCT No. 20640 TD No. 93-011-0394/ 93-011-0274
May 27, 1996	Php 3,000,000.00	TCT No. 20640 TD No. 93-011-0394/ 93-011-0274/ 1911/ 1978/ 1979
November 25, 1996	Php 2,000,000.00	TCT No. 20640 TD No. 93-011-0394/ 93-011-0274 TD No. 1911
	<b>Php 17,000,000.00</b>	

Ang and Fernandez were able to pay US\$55,882.90 and ₱198,023.30 or an equivalent total of ₱2,349,514.95. They were not able to pay their amortizations after April 30, 1998.<sup>8</sup>

<sup>4</sup> Id. at 44.

<sup>5</sup> Id. at 83.

<sup>6</sup> Id. at 84.

<sup>7</sup> Id.

<sup>8</sup> Id. at 45.

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As of April 15, 1999, the borrowers' outstanding obligations to UCPB were US\$ 683,614.23 and ₱924,177.57. Due to the failure of Ang and Fernandez to pay their loan obligations to the bank, a demand letter dated April 14, 1999 was sent to them.<sup>9</sup>

For failure of Ang and Fernandez to pay the total indebtedness as it fell due, UCPB filed a Petition for Sale under Act No. 3135, as amended, with Notary Public Atty. Immanuel L. Sodusta (Notary Public Sodusta), to satisfy the principal amount of ₱700,000.00 and US\$ 580,089.00 plus interest, penalty and other charges, attorney's fees, sheriff fees, and all other necessary expenses in the enforcement of the extrajudicial foreclosure. Notary Public Sodusta issued a Notice of Sale at Public Auction dated June 17, 1999 for an auction to be held on July 15, 1999.<sup>10</sup>

On August 2, 1999, Notary Public Sodusta sold at public auction the mortgaged properties to UCPB as the highest bidder for ₱21,985,000.00.<sup>11</sup>

On July 10, 2000, Ang and Fernandez filed a Petition for Declaration of Nullity of Foreclosure, Auction Sale and Promissory Note & Fixing of True Account of Petitioners. They prayed that a judgment or order be rendered:

- 1) Declaring the auction sale on August 2, 1999 and the Certificate of Sale dated August 9, 1999 of petitioners [Ang and Fernandez] mortgaged properties null and void;
- 2) Declaring the dollar denominated promissory notes, in so far as they require petitioners [Ang and Fernandez] to pay the total principal sum of \$ 580,089.00, its interest, and penalties in dollars as contrary to R.A. 529, and likewise, as null and void in so far as respondent bank require petitioners to pay the same in Philippine Currency equivalent to the dollar amount of the promissory notes and its interest and penalties at the rate of exchange at the time of payment on August 2, 1999 of P38.37 – to \$1.00 instead of P26.37 to a dollar, the rate at the time of incurring the obligation;
- 3) Declaring the provision on interest rate and the fixing and unilateral increase thereof solely by the bank as null and void, and that therefore, it is as if no interest has been agreed upon so that petitioners is not liable to pay any interest but only the principal of P16 Million Pesos, less payments made by petitioners for interest, and penalty of P10,000.00;
- 4) Finding respondent bank to have violated the Truth in Lending Act, and to be liable to petitioners for double the finance charge the bank requires of the petitioners, not exceeding P2,000.00 per promissory note or P10,000.00 for the five (5) promissory notes in question;

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<sup>9</sup> Id. at 22.

<sup>10</sup> Id. at 46, 85.

<sup>11</sup> Id. at 85-86.

- 5) Ordering respondent bank to pay petitioners moral damages of P50,000.00 and atty.'s fees of another P50,000.00.<sup>12</sup>

Due to the failure of Ang and Fernandez to exercise their right to redeem the mortgaged properties, a Final Deed of Sale<sup>13</sup> dated December 28, 2000 was issued by Notary Public Sodusta. Subsequently, the following tax declarations were issued by the Office of the Provincial Assessor in the name of UCPB: (a) Tax Declaration No. 05-011-035<sup>14</sup> for Lot No. 389-pt, which cancelled Tax Declaration No. 93-011-0274;<sup>15</sup> (b) Tax Declaration No. 05-011-0352<sup>16</sup> for the building standing on Lot 389-pt, cancelling Tax Declaration No. 2238;<sup>17</sup> (c) Tax Declaration No. 05-011-0468<sup>18</sup> for Lot No. 391-pt, cancelling Tax Declaration No. 2878; and (d) Tax Declaration No. 05-002-00180<sup>19</sup> for Lot No. 3460-F-1-A, cancelling Tax Declaration No. 06150.

### **Ruling of the Regional Trial Court**

On June 22, 2011, the RTC rendered its Decision,<sup>20</sup> the dispositive portion of which states:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

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.<sup>21</sup>

In nullifying the provisions imposing interest rates in the Credit Agreement, Real Estate Mortgage, and promissory notes, the RTC found that these provisions violate Articles 1308 and 1309 of the Civil Code. The

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<sup>12</sup> Id. at 46-47.

<sup>13</sup> Id. at 168-171.

<sup>14</sup> Id. at 156.

<sup>15</sup> Id. at 141.

<sup>16</sup> Id. at 157.

<sup>17</sup> Id. at 146.

<sup>18</sup> Id. at 158.

<sup>19</sup> Id. at 159.

<sup>20</sup> Penned by Assisting Judge Ledelia P. Aragona-Biliran; id. at 83-91.

<sup>21</sup> Id. at 91.

imposition of interest rates is left to the sole will of UCPB in violation of the principle of mutuality of contracts.<sup>22</sup>

In declaring void the five promissory notes Ang and Fernandez executed, the RTC explained that the practice of making borrowers sign a blank promissory note of Disclosure Statement, and fixing subsequent interest rates after, without the bank informing the borrower of the finance charges expressed as an annual percentage of the total amount to be financed or loan obligation of the borrower in a written disclosure statement violates the requirements in Sections 5, 6, and 7 of the Republic Act (R.A.) No. 3765 or the Truth in Lending Act.<sup>23</sup>

Thus, the RTC nullified the sale at public auction conducted on August 2, 1999 and ordered UCPB to recompute the total indebtedness of Ang and Fernandez based on the interest rate known and agreed by the parties at the time the contract was consummated.<sup>24</sup>

Both parties filed a Motion for Reconsideration.

The RTC issued an Order<sup>25</sup> dated December 5, 2011, the dispositive portion of which states:

WHEREFORE, premises considered, judgment is rendered:

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 made in the amount of P 2,349,514.95. 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.<sup>26</sup> (Emphasis supplied)

In reversing its earlier ruling, the RTC explained that it did not find any ground to nullify the auction sale conducted on August 2, 1999. Ang and Fernandez were held to be negligent in paying their obligation to UCPB. As for the re-computation, the RTC ordered that the imposition of the prevailing legal interest rate of 12% *per annum* be applied by the bank in computing the indebtedness and 12% *per annum* penalty charges since the interest stipulated in the loan contracts are null and void.<sup>27</sup>

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<sup>22</sup> Id. at 90.

<sup>23</sup> Id. at 90-91.

<sup>24</sup> Id. at 91.

<sup>25</sup> Penned by Presiding Judge Jemena Abellar Arbis; id. at 93-95.

<sup>26</sup> Id. at 95.

<sup>27</sup> Id.

Incidentally, on August 1, 2013, UCPB sold the properties covered by Tax Declaration Nos. 05-011-0351, 05-011-0468, and 05-011-0352 in favor of Eddie Po who is married to Nancy Po.<sup>28</sup> Accordingly, the following tax declarations were issued in the name of Eddie Po: Tax Declaration No. 4457<sup>29</sup> for Lot No. 389-pt, cancelling Tax Declaration No. 05-011-0351; Tax Declaration No. 4456,<sup>30</sup> cancelling Tax Declaration No. 05-011-0468; and Tax Declaration No. 4458,<sup>31</sup> cancelling Tax Declaration No. 05-011-0352.

### Ruling of the Court of Appeals

On May 11, 2015, the CA rendered its Decision,<sup>32</sup> the dispositive portion of which states:

WHEREFORE, the instant appeal is hereby PARTIALLY GRANTED. It is hereby declared:

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.

SO ORDERED.<sup>33</sup> (Emphasis supplied)

The CA held that the promissory notes were validly executed and that there is no evidence to support the claim of Ang and Fernandez that they were made to sign blank forms. The CA added that the validity of a promissory note is not dependent on the existence of a stipulation that it is secured by a real estate mortgage. So long as the promissory note satisfies the requirement of a contract between the parties, then it is valid and binding between the parties.<sup>34</sup> The CA also found that Ang and Fernandez failed to substantiate their claim that they failed to receive the proceeds of the loan. The CA discovered that they received the proceeds of the loan which were paid in satisfaction of their previous loans with UCPB.<sup>35</sup>

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<sup>28</sup> Id. at 160-163.  
<sup>29</sup> Id. at 164.  
<sup>30</sup> Id. at 165.  
<sup>31</sup> Id. at 166.  
<sup>32</sup> Supra note 2.  
<sup>33</sup> *Rollo*, p. 71.  
<sup>34</sup> Id. at 55-56.  
<sup>35</sup> Id. at 57.

The CA ruled that UCPB did not act in bad faith in the preparation of the real estate mortgage contracts. The terms of the real estate mortgage contracts permitted the execution of the real estate mortgage contracts even before the principal obligation existed.<sup>36</sup> The CA identified this stipulation as a “dragnet clause” or “blanket mortgage clause,” a valid stipulation to secure future and other indebtedness.<sup>37</sup>

The CA clarified that the three US-dollar denominated promissory notes are valid because R.A. No. 8183 permits obligations or transactions to be paid in the currency agreed upon by the parties.<sup>38</sup>

The CA ruled that there was no violation of the Truth in Lending Act because Ang and Fernandez failed to specifically deny under oath the genuineness and due execution of the financial statements presented to disprove their claim. Thus, they are deemed admitted under Section 8, Rule 8 of the Rules.<sup>39</sup>

Nonetheless, the CA declared the provision on interest rates void for violating the principle of mutuality of contracts. It is void because the choice of which interest rate to apply is left with UCPB.<sup>40</sup> Nonetheless, the nullity of the interest rate does not mean that Ang and Fernandez are no longer required to pay interest. It is only the rate of interest that is declared void and the stipulation requiring them to pay interest on their loan remains valid and binding.<sup>41</sup> Considering that UCPB failed to account for the actual and true indebtedness of Ang and Fernandez, the CA declared that the bank has no right to foreclose their properties and any foreclosure thereof is illegal.<sup>42</sup>

The CA imposed legal interest of 12% *per annum* to be reckoned from the date of extrajudicial demand, April 21, 1999, until June 30, 2013. Following the effectivity of BSP Circular No. 799 on July 1, 2013, the rate of interest is reduced to 6% from July 1, 2013 until the obligation is fully paid.<sup>43</sup>

In a Resolution<sup>44</sup> dated December 4, 2015, the CA denied the Motion for Reconsideration of UCPB.

In UCPB’s petition for review on *certiorari*, the bank insisted that the public auction sale on August 2, 1999 was valid. UCPB argued that the case of *Spouses Andal v. Philippine National Bank*<sup>45</sup> (*Spouses Andal*), which the CA relied upon in invalidating the auction sale, cannot be applied to the present case because in *Spouses Andal* the petitioners were unable to pay their

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<sup>36</sup> Id. at 58.  
<sup>37</sup> Id. at 59-60.  
<sup>38</sup> Id. at 60.  
<sup>39</sup> Id. at 61.  
<sup>40</sup> Id. at 61-68  
<sup>41</sup> Id. at 68-69.  
<sup>42</sup> Id. at 69.  
<sup>43</sup> Id. at 70-71.  
<sup>44</sup> Supra note 3.  
<sup>45</sup> 722 Phil. 273 (2013).

loan due solely to the exorbitant rate of interest unilaterally determined and imposed by PNB. The borrowers in said case were also able to pay a substantial portion of their loan, ₱14,800,000.00 out of ₱21,805,000.00. On the other hand, in the case of Ang and Fernandez, they failed to pay their loan “due to dollar shortage, high exchange rate.” Also, they were only able to pay ₱2,349,514.95 out of their total obligation of ₱16,000,000.00.<sup>46</sup> UCPB posited that the applicable case is *United Coconut Planters Bank v. Spouses Beluso*<sup>47</sup> (*Spouses Beluso*) where the Court upheld the validity of the foreclosure proceedings notwithstanding the issues on the computation of the total amount due to the bank.<sup>48</sup> UCPB also highlighted the ruling of the Court in *Spouses Silos v. Philippine National Bank*<sup>49</sup> (*Spouses Silos*) where the Court ruled that the extrajudicial foreclosure sale will be invalidated only when the overpayment exceeds the total amount of interest and award of attorney’s fees.<sup>50</sup> For UCPB, the foreclosure proceedings cannot be nullified because there was no overpayment as the borrowers only paid ₱2,349,514.95.<sup>51</sup>

UCPB also maintained that the provisions fixing the rate of interest in the five promissory notes are valid. The bank averred that the interest rates based on prevailing markets are valid and that the effective interest rates were duly made known to the borrowers each time they availed the proceeds of their term loan.<sup>52</sup>

#### **The Court’s Resolution dated March 16, 2016**

In a Resolution dated March 16, 2016, the Court denied the petition for review on *certiorari* of UCPB for lack of proof of service on the CA in accordance with Section 13, Rule 13 in relation to Section 5(d), Rule 56 of the Rules and for failure to sufficiently show any reversible error in the assailed judgment to warrant the exercise by the Court of its discretionary appellate jurisdiction.<sup>53</sup>

On April 18, 2016, Ang and Fernandez filed a Manifestation<sup>54</sup> pointing out that UCPB is litigating in bad faith when it failed to disclose to the Court that Eddie Po, the subsequent purchaser of the three-storey hotel used by the borrowers as collateral, demolished the property with the bank’s consent.<sup>55</sup>

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<sup>46</sup> Rollo, p. 27.  
<sup>47</sup> 557 Phil. 326 (2007).  
<sup>48</sup> Id.; rollo, p. 28.  
<sup>49</sup> 738 Phil. 156 (2014).  
<sup>50</sup> Id.  
<sup>51</sup> Rollo, p. 29.  
<sup>52</sup> Id. at 29-32.  
<sup>53</sup> Id. at 99.  
<sup>54</sup> Id. at 101-102.  
<sup>55</sup> Id.



In response to the Manifestation<sup>56</sup> of Ang and Fernandez, UCPB pointed out in its Comment<sup>57</sup> that the issues they raised in their Manifestation are matters not alleged in the original petition they filed in the RTC.<sup>58</sup> UCPB also highlighted that Ang and Fernandez committed forum shopping in filing a complaint<sup>59</sup> docketed as Civil Case No. 9866 against the bank and Eddie Po on May 6, 2015 with the intention of nullifying the effects of the extrajudicial foreclosure sale on August 2, 1999 by praying for the nullity of various documents issued as a result of, and after the said foreclosure sale.<sup>60</sup>

### **The Court's Resolution dated July 24, 2017**

In a Resolution<sup>61</sup> dated July 24, 2017, the Court granted the Motion for Reconsideration<sup>62</sup> of UCPB and reinstated the petition and required respondents to file a comment.

In their Comment,<sup>63</sup> Ang and Fernandez reiterated that the issues raised by UCPB are factual and that only questions of law may be passed upon in a petition for review on *certiorari* under Rule 45.<sup>64</sup> They stressed that the provisions fixing the rate of interest in the five promissory notes are invalid because the rate to be imposed is dependent solely on the will of UCPB.<sup>65</sup> They also argued that the public auction sale held on August 2, 1999 was invalid. They highlighted the ruling of the Court in *Spouses Andal* wherein it was held that the borrower cannot be considered in default for their inability to pay the arbitrary, illegal, and unconscionable interest rates, and penalty charges unilaterally imposed by the bank. They posited that since the interest rates are null and void, it is premature for the bank to foreclose the properties.<sup>66</sup>

Meanwhile, in UCPB's Reply,<sup>67</sup> they maintained that a petition for review on *certiorari* under Rule 45 is the proper remedy because of the questions of law involved in the case.<sup>68</sup> The bank pointed out that the CA improperly applied the ruling in *Spouses Andal* instead of the ruling in *Spouses Beluso* and *Spouses Silos*.<sup>69</sup> UCPB claimed that the ruling in *Spouses Andal* should not have been applied to the present case as it did not involve the same circumstances as the present case. The bank pointed out that *Spouses Andal* case differs from the present case due to the cause for the borrowers' default and the amount paid by the borrower to the bank before defaulting.<sup>70</sup>

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<sup>56</sup> Id. at 101-102.  
<sup>57</sup> Id. at 118-123.  
<sup>58</sup> Id. at 119.  
<sup>59</sup> Id. at 129-138.  
<sup>60</sup> Id. at 119-122.  
<sup>61</sup> Id. at 259.  
<sup>62</sup> Id. at 177-189.  
<sup>63</sup> Id. at 267-282.  
<sup>64</sup> Id. at 274.  
<sup>65</sup> Id. at 275-276.  
<sup>66</sup> *Rollo*, pp. 279-282.  
<sup>67</sup> Id. at 295-307.  
<sup>68</sup> Id. at 299-300.  
<sup>69</sup> *Rollo*, pp. 300-301.  
<sup>70</sup> Id. 301.



UCPB emphasized that the foreclosure proceedings on the mortgaged properties remain to be valid if a demand is made for the debtors to pay their loan obligation despite being excessive, and that the debtors are in default with respect to the proper amount of their obligation. It is only if the proceeds of the foreclosure sale exceed the total amount due to the creditor that the extrajudicial foreclosure and sale will be invalidated.<sup>71</sup>

### Issues

The issues to be resolved are:

1. Whether the petition should be dismissed for raising questions of fact in violation of Rule 45 of the Rules;
2. Whether the stipulations on payment of interests stated in the Credit Agreement, promissory notes, and disclosure statements are valid; and
3. Whether the extra-judicial foreclosure of mortgage is valid despite the nullity of the provisions imposing interests which resulted in the erroneous computation of Ang and Fernandez's total obligation.

### The Ruling of the Court

The petition is meritorious.

**Despite the questions of fact raised in the petitions for review on certiorari, the Court may give due course to the petition.**

As a rule, issues dealing with the sufficiency of evidence and the relative weight accorded to it by the lower court cannot be raised in a petition for review on certiorari under Rule 45, which is confined to questions of law. The Court does not review factual questions raised under Rule 45 as it is not its function to analyze nor weigh all over again evidence already considered in the proceedings below. Nevertheless, this rule is not absolute. In *Microsoft Corp. v. Farajallah*,<sup>72</sup> the Court declared that a review of the factual findings of the CA is proper in the following instances:

x x x x

(3) when the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd, or impossible;

x x x x

(6) when the judgment of the Court of Appeals is premised on a misapprehension of facts;

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<sup>71</sup> Id. at 301-305.

<sup>72</sup> 742 Phil. 775 (2014).

(7) when the Court of Appeals failed to notice certain relevant facts which, if properly considered, would justify a different conclusion;<sup>73</sup>

X X X X

This case falls within the foregoing exceptions. A careful re-examination of the evidence on record is necessary to determine whether the CA failed to notice and properly appreciate certain relevant facts which, if properly considered, would justify a different conclusion. There is a need to review whether the ruling in *Spouses Andal* was properly applied by the CA in invalidating the auction sale held on August 2, 1999.

**The stipulations on the payment of interests in the Credit Agreement, promissory notes, and disclosure statements are void.**

The relevant stipulations on interest in the Credit Agreement dated April 30, 1997 are as follows:

ARTICLE II  
INTEREST AND OTHER BANK CHARGES

**Section 2.01 Interest Rate.** Unless otherwise expressly stipulated, any availment of the Accommodation shall be subject to interest See Terms and Conditions for details.

**Section 2.02 Compounding of Interest.** Interest not paid when due shall form part of the principal and shall be subject to the same interest rate as herein stipulated.

**Section 2.03 Computation of Interest.** The interest herein stipulated and other obligations of CLIENT for which no definite term has been provided shall be computed on the basis of actual number of days elapsed and a year of 360 days.

**Section 2.04. Penalty Charges.** In addition to the interest provided for in Section 2.01 of this ARTICLE, any principal obligation of the CLIENT hereunder which is not paid when due shall be subject to a penalty charge of one percent (1%) of the amount of such obligation per month computed from the date until the obligation is paid in full. If the BANK accelerates the payment of availments, hereunder pursuant to ARTICLE VII hereof, the penalty charge shall be based on the total principal amount outstanding and unpaid computed from date of acceleration until the obligation is paid in full.

**Section 2.05. Adjustment in Interest and Other Bank Charges.** The BANK reserves the right to review the interest rate and other charges herein provided every thirty (30) to sixty (60) days from and after the date of drawing or availment and by written notice to the CLIENT and effective for the relevant interest period, to increase or decrease such

<sup>73</sup>

Id. at 785.

interest rate and charges or change the reference lending rate basis thereof as and to the extent hereafter allowed by law, or by the rules, regulations, memoranda or circular issued by the Monetary Board or by the Central Bank or the Banker's Association of the Philippines, or as may be charged by other banks offering the same accommodations as provided herein or as the BANK may determine taking into consideration all of the foregoing factors and its dealings with the CLIENT.<sup>74</sup> (Emphasis and underscoring in the original)

The interest rate in the Credit Agreement made reference to the Terms & Conditions, the pertinent portion of which states:

Interest Rate: Prevailing market rate based on the Manila Reference Rate (MRR) or the Treasury Bill Rate (TBR) or other market-based reference rates then obtaining at the time of each availment and shall be subject to quarterly interest review and resetting at the option of the bank.<sup>75</sup>

Based on the Credit Agreement, UCPB can impose its interest rates based on any of the following: (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.<sup>76</sup>

Meanwhile, in the uniformly worded promissory notes, it is stated that the bank can utilize the following references, to wit: (1) the prevailing market rate as determined by Consumers Credit Department – Visayas Lending Office based in Cebu City; or (2) the interest rates may be reviewed, increased, or decreased by the lender or bank considering: (a) the prevailing financial and monetary conditions; (b) rate of interest or charges other banks or financial institutions charge or offer to charge for similar accommodation, and/ or; (3) the resulting profitability to the Lender or Bank.<sup>77</sup>

Between the promissory notes and the Credit Agreement, it is the interest stipulations in the latter that should prevail, as addressed in Section 1.05 of Credit Agreement which states:

ARTICLE I  
THE ACCOMMODATION

X X X X

**Section 1.05. Promissory Note/s.** The promissory note/s or other instruments which CLIENT shall execute as evidence of availment/s of the Accommodation shall be dated on the date of drawing or availment, shall state the interest rate

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<sup>74</sup> *Rollo*, pp. 62-63.

<sup>75</sup> *Id.* at 64.

<sup>76</sup> *Id.* at 89.

<sup>77</sup> *Id.*

agreed upon by the parties hereof and in any event shall be in the form prescribed by the BANK, the terms and conditions of which shall be deemed incorporated herein by reference (the "Note/s"). In case of conflict between the terms of the Note/s or other instruments and terms of this AGREEMENT, the latter shall prevail.<sup>78</sup> (Emphasis in the original, underscoring supplied)

In the present case, UCPB is given the option to review or reset on a quarterly basis the market references enumerated in the Credit Agreement from which interest rate to be imposed on the obligation of Ang and Fernandez will be derived. The Manila Reference Rates, Treasury Bill Rates, other Market Based Reference Rates are references determined independent of any participation of the bank and are ascertainable at the time the amortizations fall due. Only the option to review or reset on a quarterly basis these references is given to the bank. The clear import of the stipulation in question is that the parties undertook to subject themselves to prevailing market rates. The borrowers agreed to the arrangement that the interest will be based on any of the independent and recognized financial rates prevailing as the amortizations fall due and the upward or downward adjustments in market rates are beyond the control of the bank.

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.

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 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.<sup>79</sup>

In *Spouses Beluso*, the Court ruled that if either of the "choices presents an opportunity for UCPB to fix the rate at will, the bank can easily choose such an option, thus making the entire interest rate provision violative of the principle of mutuality of contracts."<sup>80</sup> Considering that discretion to choose the reference rate and review mechanism were solely given to UCPB, the stipulations on interest are void for as the element of consent of the borrower is wanting.

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<sup>78</sup> Id. at 64.

<sup>79</sup> Id. at 89.

<sup>80</sup> Id. at 341.



**UCPB did not violate Sections 5, 6, and 7 of the R.A. No. 3765 or the "Truth in Lending Act."**

In nullifying the five promissory notes executed by Ang and Fernandez, the RTC held that UCPB violated Sections 5, 6, and 7 of the R.A. No. 3765<sup>81</sup> or the Truth in Lending Act. The RTC explained that the practice of making borrowers sign a blank promissory note of Disclosure Statement, and fixing subsequent interest rates after, without the bank informing the borrower of the finance charges expressed as an annual percentage of the total amount to be financed or loan obligation of the borrower in a written disclosure statement violates the law.<sup>82</sup>

However, the RTC failed to take into consideration that Ang and Fernandez did not specifically deny under oath the genuineness and due execution of the financial statements the bank presented to disprove their claim. Section 8, Rule 8 of the Rules provides:

Section 8. *How to contest such documents.* – When an action or defense is founded upon a written instrument, or attached to the corresponding pleading as provided in the preceding section, **the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath specifically denies them, and set forth what he or she claims to be the facts;** but the requirement of an oath does not apply when the adverse party does not appear to be a party to the instrument or when

<sup>81</sup> Sections 5 and 6 of R.A. No. 3765 state:

**Section 5.** The Board shall prescribe such rules and regulations as may be necessary or proper in carrying out the provisions of this Act. Any rule or regulation prescribed hereunder may contain such classifications and differentiations as in the judgment of the Board are necessary or proper to effectuate the purposes of this Act or to prevent circumvention or evasion, or to facilitate the enforcement of this Act, or any rule or regulation issued thereunder.

**Section 6.** (a) Any creditor who in connection with any credit transaction fails to disclose to any person any information in violation of this Act or any regulation issued thereunder shall be liable to such person in the amount of P100 or in an amount equal to twice the finance charged required by such creditor in connection with such transaction, whichever is the greater, except that such liability shall not exceed P2,000 on any credit transaction. Action to recover such penalty may be brought by such person within one year from the date of the occurrence of the violation, in any court of competent jurisdiction. In any action under this subsection in which any person is entitled to a recovery, the creditor shall be liable for reasonable attorney's fees and court costs as determined by the court.

(b) Except as specified in subsection (a) of this section, nothing contained in this Act or any regulation contained in this Act or any regulation thereunder shall affect the validity or enforceability of any contract or transactions.

(c) Any person who willfully violates any provision of this Act or any regulation issued thereunder shall be fined by not less than P1,000 or more than P5,000 or imprisonment for not less than 6 months, nor more than one year or both.

(d) No punishment or penalty provided by this Act shall apply to the Philippine Government or any agency or any political subdivision thereof.

(e) A final judgment hereafter rendered in any criminal proceeding under this Act to the effect that a defendant has willfully violated this Act shall be prima facie evidence against such defendant in an action or proceeding brought by any other party against such defendant under this Act as to all matters respecting which said judgment would be an estoppel as between the parties thereto.

<sup>82</sup> *Rollo*, pp. 90-91.

compliance with an order for an inspection of the original instrument is refused. (Emphasis supplied)

Thus, the CA was correct in concluding that the financial statements UCPB presented are deemed admitted.<sup>83</sup> The allegation of Ang and Fernandez that UCPB violated the provisions of the Truth in Lending Act was belied by their admission of the genuineness and due execution of the financial statements UCPB.

*Even assuming that the interest stipulation is void, the foreclosure proceedings on the mortgaged properties and the auction sale conducted are valid.*

The foreclosure proceedings on the mortgaged properties remain to be valid even if the interest the bank imposed is erroneous. The debtors are in default with respect to the proper amount of their obligation.<sup>84</sup> In *Advocates for Truth in Lending, Inc. v. Bangko Sentral Monetary Board*,<sup>85</sup> the Court stressed that:

x x x [T]he 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 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, following the guidelines laid down in the landmark case of *Eastern Shipping Lines, Inc. v. Court of Appeals*, x x x<sup>86</sup> (Emphasis supplied; italics in the original; citations omitted)

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.

The CA erred in relying in *Spouses Andal* in justifying the nullity of the foreclosure proceedings and auction sale. The Court cannot indiscriminately apply its ruling to all instances involving foreclosure of mortgaged properties of defaulting debtors due to usurious interests. The circumstances peculiar to the case that influenced the Court to render such ruling should have been taken into consideration by the CA before applying it to the case of Ang and Fernandez.

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<sup>83</sup> Id. at 61.

<sup>84</sup> Supra note 47 at 350.

<sup>85</sup> 701 Phil. 483 (2013).

<sup>86</sup> Id. at 500-501.

As pointed out by UCPB, the borrowers in *Spouses Andal* were unable to pay their loan solely due to “the exorbitant rate of interest unilaterally determined and imposed” by the bank. On the other hand, in the present case, Ang and Fernandez defaulted in their loan obligation “due to dollar shortage, high exchange rate.”<sup>87</sup> Moreover, in *Andal*, the borrowers were able to pay a substantial portion of their loan, ₱14,800,000.00 out of ₱21,805,000.00 or approximately 68% of their loan. Meanwhile, in the present case, Ang and Fernandez were only able to pay ₱2,349,514.95 of their ₱16,000,000.00 principal obligation.

In addition, in *Spouses Beluso*, the Court ruled that:

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.<sup>88</sup>

x x x x

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.<sup>89</sup> (Citation omitted)

Although the case of *Spouses Beluso* is not on all fours as the circumstances surrounding the present case, the Court finds it more appropriate to adopt the principle established in said case due to the similarities in the issues, and judicial remedies availed. Applying the principle in *Spouses Beluso*, the Court finds that the CA erred in annulling the foreclosure of the properties of Ang and Fernandez based on an alleged incorrect computation of their total indebtedness. The corresponding titles had already been consolidated in the name of UCPB due to their failure to exercise their right of redemption within the period prescribed. Assuming that the outstanding obligation of the borrowers had been erroneously overstated, UCPB still made a valid demand upon Ang and Fernandez as they are considered in default with respect to the proper amount of their unpaid principal obligation to the bank. The properties mortgaged to secure such amounts may be foreclosed and the proceeds should be applied to the extent of the amount UCPB is entitled to receive.

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<sup>87</sup> *Rollo*, p. 27.

<sup>88</sup> *Id.* at 346.

<sup>89</sup> *Id.* at 350.





Even if the interest stipulation in the loan obligation is nullified, the entire obligation does not become void; the unpaid principal debt still remains valid and only the stipulation as to the interest is rendered void. In such case, it is the prevailing legal interest that shall be imposed.

Between the date the RTC validated the foreclosure sale on December 5, 2011 and the date the CA reversed the ruling of the RTC on May 11, 2015, there was no effort on the part of Ang and Fernandez to pay the principal obligation. During the approximately four-year period that the foreclosure sale was declared valid, they did not offer to pay the principal amount or even a substantial part of it, thereby showing their utter lack of interest to pay their obligation at all. On the contrary, respondents have not exhibited good faith in settling their long-overdue obligation.

Granting *arguendo* that the total obligation of Ang and Fernandez had been overstated due to the alleged void interest stipulation, they should have at least manifested an earnest desire to pay their loan obligation by at least substantially paying the principal obligation to warrant the application of the ruling in *Andal*. In the present case, the records reveal that Ang and Fernandez were only able to pay US\$ 55,882.90 and ₱198,023.30 or a Philippine peso equivalent of ₱2,349,514.95 of the total principal obligation of ₱16,054,955.83. Indeed, there was a valid demand with respect to the proper amount – and this amount pertains to the undisputed principal obligation. Even if the interest is still in question, earnest and genuine effort should have still been made to pay the principal obligation. Though the interest imposed was erroneous, the principal obligation remains demandable. Even if the Court applies the ₱2,349,514.95 Ang Fernandez paid to their ₱16,000,000.00 principal obligation, this is hardly sufficient to nullify the foreclosure. Even without the purported void interest stipulation, they still clearly defaulted in their loan obligation. Therefore, a remand of the case to the trial court to re-compute the total indebtedness is no longer necessary.

UCPB had the right to foreclose the securities in question after Ang and Fernandez unjustifiably ceased paying their amortizations after the first year. In *Equitable PCI Bank, Inc. v. OJ-Mark Trading, Inc.*,<sup>90</sup> the Court held that:

Foreclosure is but a necessary consequence of non-payment of a mortgage indebtedness. In a real estate mortgage when the principal obligation is not paid when due, the mortgagee has the right to foreclose the mortgage and to have the property seized and sold with the view of applying the proceeds to the payment of the obligation.<sup>91</sup> (Citation omitted)

A compartmentalized interpretation of the doctrine laid down in *Andal* defeats the principles of fairness and justice. The Court cannot simply nullify the foreclosure sale wherein the bank was declared the highest bidder and the

<sup>90</sup> 642 Phil. 234 (2010).

<sup>91</sup> *Id.* at 247.

subsequent transfer it made to an innocent purchaser for value. Banking institutions pertain to:

x x x [e]ntities x x x engage[d] in the lending of funds **obtained from the public** through the receipt of deposits or the sale of bonds, securities, or obligations of any kind x x x<sup>92</sup> (Emphasis supplied)

The funds obtained by Ang and Fernandez from UCPB belong to the public as these are derived through the different products of the bank including *inter alia* deposits, sale of bonds, and securities.

Section 52 of the General Banking Law of 2000 states:

Section 52. *Acquisition of Real Estate by Way of Satisfaction of Claims.* – Notwithstanding the limitations of the preceding Section, a bank may acquire, hold or convey real property under the following circumstances:

52.1. Such as shall be mortgaged to it in good faith by way of security for debts;

52.2. Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings; or

52.3. Such as it shall purchase at sales under judgments, decrees, mortgages, or trust deeds held by it and such as it shall purchase to secure debts due it.

**Any real property acquired or held under the circumstances enumerated in the above paragraph shall be disposed of by the bank within a period of five (5) years or as may be prescribed by the Monetary Board; *Provided, however,* That the bank may, after said period, continue to hold the property for its own use, subject to the limitations of the preceding Section. (Emphases and underscoring supplied)**

Here, the RTC declared that the foreclosure sale was valid on December 5, 2011. UCPB sold the foreclosed assets to Eddie Po on August 1, 2013<sup>93</sup> and the foreclosure sale was nullified on May 11, 2015. To permit an outright nullification of a foreclosure sale solely based on the imposition of an erroneous interest would be to discourage the public from purchasing foreclosed assets of banks which are statutorily mandated to dispose these within a period of five years or as may be prescribed by the Monetary Board. This 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.

<sup>92</sup> R.A. No. 337, Section 2.

<sup>93</sup> *Rollo*, p. 136.

Considering the foregoing, UCPB was well within its right to foreclose the securities of Ang and Fernandez and eventually sell these to innocent purchasers for value. Ang and Fernandez cannot enjoy the benefits of the loan they obtained from the bank and later on renege on their obligation when it has become difficult for them to fulfill their obligation, without suffering consequence of foreclosure of their mortgaged properties.

**There is no reason to believe that Ang and Fernandez did not receive the proceeds of the loans they obtained.**

It is difficult to believe the claim of Ang and Fernandez that they did not receive the proceeds of the loans they obtained. The fact that they made an effort to pay their amortizations during the first year belies their claim. It is settled “that a party to a contract cannot deny its validity after enjoying its benefits without outrage to one’s sense of justice and fairness.”<sup>94</sup> They cannot refute now the existence and veracity of the credit line agreement extended to them and the promissory notes they issued in favor of UCPB. Based on the conduct of the borrowers and their admission of partially paying their loan obligation, they are now estopped from assailing the validity and due execution of the Credit Agreement and the promissory notes and the fact that they defaulted after reaping the benefits from the loans they obtained. As the famous expression goes, “you cannot have your cake and eat it too.”

**WHEREFORE**, premises considered, the Decision dated May 11, 2015 and the Resolution dated December 4, 2015 of the Court of Appeals in CA-G.R. CV No. 04270 are **SET ASIDE**. Judgment is rendered as follows:

1. The extrajudicial foreclosure and auction sale conducted on August 2, 1999 is **DECLARED** valid; and
2. The Petition for Declaration of Nullity of Foreclosure, Auction Sale and Promissory Note & Fixing of True Account of Petitioners is **DISMISSED**

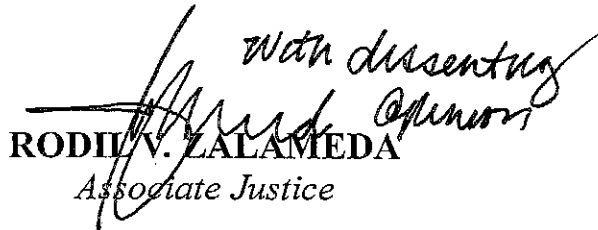
**SO ORDERED.**

  
**ROSMARI D. CARANDANG**  
Associate Justice

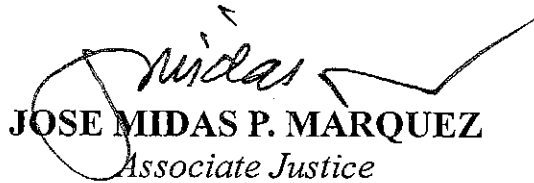
<sup>94</sup> *Development Bank of the Philippines v. Court of Appeals*, 526 Phil. 525 (2006).

**WE CONCUR:**

  
**MARVIC MARIO VICTOR F. LEONEN**  
*Associate Justice*

*With dissenting  
opinions*  
  
**RODIL V. ZALAMEDA**  
*Associate Justice*

  
**RICARDO R. ROSARIO**  
*Associate Justice*

*Midas*  
  
**JOSE MIDAS P. MARQUEZ**  
*Associate Justice*

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARVIC MARIO VICTOR F. LEONEN**  
*Associate Justice*

**CERTIFICATION**

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

  
**ALEXANDER G. GESMUNDO**  
*Chief Justice*



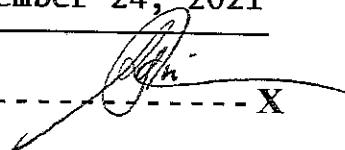
### THIRD DIVISION

G.R. No. 222448 – United Coconut Planters Bank, *Petitioner*, v. Editha F. Ang and Violeta M. Fernandez, *Respondents*.

Promulgated:

November 24, 2021

X-----X



### DISSENTING OPINION

ZALAMEDA, J.:

The *ponencia* grants the Petition for Review on Certiorari by United Coconut Planters Bank (UCPB) and sets aside the Decision dated 11 May 2015 and Resolution dated 04 December 2015 of the Court of Appeals.<sup>1</sup> While the stipulations on the payment of interest in the Credit Agreement dated 30 April 1997, promissory notes, and disclosure statements are void, the *ponencia* still ruled that the foreclosure proceedings and the auction sale conducted were valid. Thus, the *ponencia* ultimately dismisses respondents Editha F. Ang and Violeta M. Fernandez's (respondents) *Petition for Declaration of Nullity of Foreclosure, Auction Sale and Promissory Note & Fixing of True Account of Petitioners*.

I respectfully dissent.

*The provisions on interest rates are void for violating the principle of mutuality of contracts under Article 1308 of the Civil Code*

The Credit Agreement states<sup>2</sup>:

#### ARTICLE II INTEREST AND OTHER BANK CHARGES

Section 2.01 Interest Rate. Unless otherwise expressly stipulated, any availment of the Accommodation shall be subject to interest See Terms and Conditions for details.

<sup>1</sup> *Ponencia*, pp. 19 and 15-19.

<sup>2</sup> *Id.* at 11-12.



In turn, the Credit Agreement refers to the Terms and Conditions for the interest rate, the relevant portion of which provides<sup>3</sup>:

Interest Rate: Prevailing market rate based on the Manila Reference Rate (MRR) or the Treasury Bill Rate (TBR) or other market-based reference rates then obtaining at the time of each availment **and shall be subject to quarterly interest review and resetting at the option of the bank.**<sup>4</sup>

The *ponencia* recognizes that pursuant to the Credit Agreement, UCPB can impose its interest rates based on any of the following: (1) the prevailing market rate of the Manila Reference Rate; (2) Treasury Bill Rates; or (3) **other market-based reference rate obtaining at the time of each availment subject to the quarterly interest review and resetting at the option of the bank.**<sup>5</sup>

Moreover, the uniformly worded promissory notes state that the bank can utilize the following references for the interest rates: (1) the prevailing market rate as determined by Consumers Credit Department – Visayas Lending Office based in Cebu City; or (2) the interest rates may be reviewed, increased, or decreased by the lender or bank considering (a) the prevailing financial and monetary conditions; (b) rate of interest or charges other banks or financial institutions charge or offer to charge for similar accommodation, and/or; (3) the resulting profitability to the Lender or the Bank.<sup>6</sup> The *ponencia* also noted that in case of conflict between the Credit Agreement and promissory notes, the interest stipulations in the former prevails.

While UCPB is given the option to review or reset on a quarterly basis the market references from which the interest rate to be imposed on respondents' debt, the references are determined independently of the participation of the bank and are ascertainable at the time the amortizations fall due. Moreover, the *ponencia* notes that a variable-rate stipulation is a common financial agreement, and here, respondents agreed to this arrangement. Clearly, the foregoing provisions on the unilateral imposition of interest rates violate the principle of mutuality of contracts.

To clarify, there may be instances where an interest rate scheme which does not specifically indicate a particular interest rate may be validly

<sup>3</sup> *Id.* at 12.

<sup>4</sup> Emphasis supplied.

<sup>5</sup> *Ponencia*, p. 12.

<sup>6</sup> *Id.*



imposed. Such interest rate scheme refers to what is typically called a floating interest rate system.<sup>7</sup>

In *Security Bank Corp. v. Spouses Mercado (Security Bank)*<sup>8</sup>, this Court explained that floating rates of interest refer to the variable interest rates stated on a market-based reference rate agreed upon by the parties. Stipulations on floating rate of interest differ from escalation clauses. Escalation clauses are stipulations which allow for the increase of the original fixed interest rate. In contrast, a floating rate of interest pertains to the interest rate itself that is not fixed as it is dependent on a market-based reference that was agreed upon by the parties.<sup>9</sup>

Citing the Manual of Regulations for Banks of the Bangko Sentral ng Pilipinas (BSP), this Court, in *Security Bank*, discussed how the BSP allows banks and borrowers to agree on a floating rate of interest, provided that it must be based on market-based reference rates:

§ X305.3 Floating rates of interest. — The rate of interest on a floating rate loan during each interest period shall be stated on the basis of Manila Reference Rates (MRRs), T-Bill Rates or **other market based reference rates plus a margin as may be agreed upon by the parties.**<sup>10</sup>

We stated that “[t]his BSP requirement is consistent with the principle that the determination of interest rates cannot be left solely to the will of one party. It further emphasizes that the reference rate must be stated in writing, and must be agreed upon by the parties.” **In order for the concept of a floating rate of interest to apply, it presupposes that a market-based reference rate is indicated in writing and agreed upon by the parties.** Hence, in *Security Bank*, We did not deem the interest rate imposed therein as an imposable floating rate of interest because the “reference rates are not contained in writing as required by law and the BSP.”<sup>11</sup>

Applying the foregoing in the instant case, the provisions on the interest rate violate the principle of mutuality of contracts under Article 1308 of the Civil Code and are therefore void. As to the promissory notes, it appears that the “prevailing market rate” will be determined internally by UCPB’s Consumers Credit Department – Visayas Lending Office and not solely based on MRRs, T-Bill rates, or other market-based reference rates

<sup>7</sup> *Vasquez v. Philippine National Bank*, G.R. Nos. 228355 & 228397, 28 August 2019 [Per J. Caguioa].

<sup>8</sup> *Security Bank Corp. v. Spouses Mercado*, G.R. Nos. 192934 & 197010, 27 June 2018 [Per J. Jardeleza].

<sup>9</sup> *Vasquez v. Philippine National Bank*, *supra* at note 7.

<sup>10</sup> Emphasis supplied.

<sup>11</sup> *Vasquez v. Philippine National Bank*, *supra* at note 7, citing *Security Bank Corp. v. Spouses Mercado*, *supra* at note 8.

and without the agreement by the parties.<sup>12</sup> In addition, the interest rates may be reviewed, increased, or decreased by UCBP and among the considerations is “[t]he resulting profitability to the Lender or the Bank.”

However, the borrower's current financial state, his feedback or opinions, the nature and purpose of his borrowings, the effect of foreign currency values or fluctuations on his business or borrowing, among others, are not factors which influence the fixing of interest rates to be imposed on him.<sup>13</sup> Thus, this one-sided, indeterminate, and subjective criteria of fixing interest rates, such as UCPB's profitability and financial or market conditions, is arbitrary for there is no fixed standard or margin above or below these considerations and thus violates the principle of mutuality of contracts.<sup>14</sup>

Even assuming that the Credit Agreement prevails over the promissory notes, the provision in the former allowing UCPB to reset the interest rate at its sole option is still void for violating Article 1308 of the Civil Code. As discussed above, the interest rates may be based on “**other market-based reference rate obtaining at the time of each availment subject to the quarterly interest review and resetting at the option of [UCPB].**” In other words, while it appears that some “market-based reference rate” will be the basis of interest rate at the time of each availment, UCPB has the sole option to review and reset the rate, without any consent from the borrower. This arrangement is clearly one-sided, unilateral, and violative of one of the essential characteristics of contract which is mutuality.

This Court has held that “[t]here is no mutuality of contracts when the determination or imposition of interest rates is at the sole discretion of a party to the contract.”<sup>15</sup>

The provisions in a loan agreement that grant lenders unrestrained power to modify interest rates, penalties and other charges at the latter's sole discretion and without giving prior notice to and securing the consent of the borrowers reek of unilateral authority that is anathema to the mutuality of contracts and enable lenders to take undue advantage of borrowers.<sup>16</sup> The rate of interest is a principal condition, if not the most important component, of a loan agreement. Thus, “any modification thereof must be mutually agreed upon; otherwise, it has no binding effect.”<sup>17</sup> Given these, the method

<sup>12</sup> *Ponencia*, p. 12.

<sup>13</sup> *Spouses Silos v. Philippine National Bank*, 738 Phil. 156 (2014) [Per J. Del Castillo].

<sup>14</sup> *Vasquez v. Philippine National Bank*, *supra* at note 7.

<sup>15</sup> *Id.*, citing *Spouses Limso v. Philippine National Bank*, 779 Phil. 287 (2016) [Per J. Leonen].

<sup>16</sup> *New Sampaguita Builders Construction v. Philippine National Bank*, 479 Phil. 483 (2004) [Per J. Panganiban].

<sup>17</sup> *Vasquez v. Philippine National Bank*, *supra* at note 7, citing *Spouses Silos v. Philippine National Bank*, *supra* at note 13.

of fixing the interest rate in the promissory notes and Credit Agreement is void.


*The sale at public auction is void considering that respondents were not given an opportunity to settle their debt at the correct amount due to the imposition of a void interest rate scheme*

As noted by the *ponencia*, the properties mortgaged by respondents were foreclosed by UCPB and the auction sale was conducted on 15 July 1999. Then, on 02 August 1999, Notary Public Immanuel L. Sodusta sold the mortgaged properties to UCPB as highest bidder for PhP21,895,000.00.<sup>18</sup> However, considering that the provisions on interest rates are void, the sale at public auction should be nullified.

It would be unjust if the foreclosure sale of the properties was considered valid, as this would result in an inequitable situation where respondents 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.<sup>19</sup>

In a situation wherein a debtor was not given an opportunity to settle his/her debt at the correct amount due to the imposition of a null and void interest rate scheme, no foreclosure proceedings may be instituted. The registration of such foreclosure sale has been held to be invalid and cannot vest title over the mortgaged property.<sup>20</sup>

Given the foregoing, I respectfully dissent, and vote to deny UCPB's Petition for Review on Certiorari and affirm the CA's Decision dated 11 May 2015 and Resolution dated 04 December 2015.

  
**RODIL V. ZALAMEDA**  
Associate Justice

<sup>18</sup> *Ponencia*, p. 3.

<sup>19</sup> *Vasquez v. Philippine National Bank*, *supra* at note 7.

<sup>20</sup> *Vasquez v. Philippine National Bank*, *supra* at note 7, citing *Heirs of Espiritu v. Spouses Landrito*, 549 Phil. 180 (2007) [Per J. Chico-Nazario], *Spouses Castro v. Tan*, 620 Phil 239 (2009) [J. Del Castillo], *Spouses Albos v. Spouses Embisan*, 748 Phil. 907 (2014) [Per J. Velasco], *Spouses Andal v. Philippine National Bank*, 722 Phil. 273 (2013) [Per J. Perez].

