Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

SPOUSES HUMBERTO P. DELOS SANTOS AND CARMENCITA M. DELOS SANTOS, Petitioners,	**G.R. No. 153852**
	Present:
	SERENO, *C.J.*, LEONARDO-DE CASTRO, BERSAMIN,
-versus -	VILLARAMA, JR., and REYES, *JJ.*
	Promulgated:
METROPOLITAN BANK AND TRUST COMPANY, Respondent.	24 OCT 2012

x----------x

D E C I S I O N

BERSAMIN, *J.*:

A writ of preliminary injunction to enjoin an impending extrajudicial foreclosure sale is issued only upon a clear showing of a violation of the mortgagor's unmistakable right.[1]

This appeal is taken by the petitioners to review and reverse the decision promulgated on February 19, 2002,[2] whereby the Court of Appeals (CA) dismissed their petition for *certiorari* that assailed the denial by the Regional Trial Court in Davao City (RTC) of their application for the issuance of a writ of preliminary injunction to prevent the extrajudicial

---

[1] *Selegna Management and Development Corporation v. United Coconut Planters Bank,* G.R. No. 165662, May 3, 2006, 489 SCRA 125, 127.

[2] *Rollo,* pp. 43-48; penned by Associate Justice Eugenio S. Labitoria (retired), with Associate Justice Teodoro P. Regino (retired) and Associate Justice Rebecca de Guia-Salvador concurring.

foreclosure sale of their mortgaged asset initiated by their mortgagee, respondent Metropolitan Bank and Trust Company (Metrobank).

Antecedents

From December 9, 1996 until March 20, 1998, the petitioners took out several loans totaling ₱12,000,000.00 from Metrobank, Davao City Branch, the proceeds of which they would use in constructing a hotel on their 305-square-meter parcel of land located in Davao City and covered by Transfer Certificate of Title No. I-218079 of the Registry of Deeds of Davao City. They executed various promissory notes covering the loans, and constituted a mortgage over their parcel of land to secure the performance of their obligation. The stipulated interest rates were 15.75% *per annum* for the long term loans (maturing on December 9, 2006) and 22.204% *per annum* for a short term loan of ₱4,400,000.00 (maturing on March 12, 1999).[3] The interest rates were fixed for the first year, subject to escalation or de-escalation in certain events without advance notice to them. The loan agreements further stipulated that the entire amount of the loans would become due and demandable upon default in the payment of any installment, interest or other charges.[4]

On December 27, 1999, Metrobank sought the extrajudicial foreclosure of the real estate mortgage[5] after the petitioners defaulted in their installment payments. The petitioners were notified of the foreclosure and of the forced sale being scheduled on March 7, 2000. The notice of the sale stated that the total amount of the obligation was ₱16,414,801.36 as of October 26, 1999.[6]

---

3 *Rollo*, p. 100.
4 Records, pp. 33-54
5 *Rollo*, pp. 146-148.
6 Records, p. 119.

On April 4, 2000, prior to the scheduled foreclosure sale (*i.e.*, the original date of March 7, 2000 having been meanwhile reset to April 6, 2000), the petitioners filed in the RTC a complaint (later amended) for damages, fixing of interest rate, and application of excess payments (with prayer for a writ of preliminary injunction). They alleged therein that Metrobank had no right to foreclose the mortgage because they were not in default of their obligations; that Metrobank had imposed interest rates (*i.e.*, 15.75% *per annum* for two long-term loans and 22.204% *per annum* for the short term loan) on three of their loans that were different from the rate of 14.75% *per annum* agreed upon; that Metrobank had increased the interest rates on some of their loans without any basis by invoking the escalation clause written in the loan agreement; that they had paid ₱2,561,557.87 instead of only ₱1,802,867.00 based on the stipulated interest rates, resulting in their excess payment of ₱758,690.87 as interest, which should then be applied to their accrued obligation; that they had requested the reduction of the escalated interest rates on several occasions because of its damaging effect on their hotel business, but Metrobank had denied their request; and that they were not yet in default because the long-term loans would become due and demandable on December 9, 2006 yet and they had been paying interest on the short-term loan in advance.

The complaint prayed that a writ of preliminary injunction to enjoin the scheduled foreclosure sale be issued. They further prayed for a judgment making the injunction permanent, and directing Metrobank, namely: (*a*) to apply the excess payment of ₱758,690.87 to the accrued interest; (*b*) to pay ₱150,000.00 for the losses suffered in their hotel business; (*c*) to fix the interest rates of the loans; and (*d*) to pay moral and exemplary damages plus attorney's fees.[7]

In its answer, Metrobank stated that the increase in the interest rates had been made pursuant to the escalation clause stipulated in the loan

---

[7] *Rollo*, pp. 97-108.

agreements; and that not all of the payments by the petitioners had been applied to the loans covered by the real estate mortgage, because some had been applied to another loan of theirs amounting to ₱500,000.00 that had not been secured by the mortgage.

In the meantime, the RTC issued a temporary restraining order to enjoin the foreclosure sale.[8] After hearing on notice, the RTC issued its order dated May 2, 2000,[9] granting the petitioners' application for a writ of preliminary injunction.

Metrobank moved for reconsideration.[10] The petitioners did not file any opposition to Metrobank's motion for reconsideration; also, they did not attend the scheduled hearing of the motion for reconsideration.

On May 19, 2000, the RTC granted Metrobank's motion for reconsideration, holding in part,[11] as follows:

> xxx [I]n the motion at bench as well as at the hearing this morning defendant Metro Bank pointed out that in all the promissory notes executed by the plaintiffs there is typewritten inside a box immediately following the first paragraph the following:
>
> > "At the effective rate of 15.75% for the first year subject to upward/downward adjustments for the next year thereafter."
>
> Moreover, in the form of the same promissory notes, there is the additional stipulation which reads:
>
> > "*The rate of interest and/or bank charges herein-stipulated, during the term of this Promissory Note, its extension, renewals or other modifications, may be increased, decreased, or otherwise changed from time to time by the bank without advance notice to me/us in the event of changes in the interest rates prescribed by law of the Monetary Board of the Central Bank of the Philippines, in the rediscount rate of member banks with the Central Bank of the Philippines, in the interest rates on savings and time deposits, in the interest rates on the Bank's*

---

8 Records, p. 125.
9 *Rollo*, p. 110.
10 Id. at 111-114
11 Id. at 121-122.

> *borrowings, in the reserve requirements, or in the overall costs of funding or money;"*
>
> There being no opposition to the motion despite receipt of a copy thereof by the plaintiffs through counsel and finding merit to the motion for reconsideration, this Court resolves to reconsider and set aside the Order of this Court dated May 2, 2000.
>
> x x x x
>
> **SO ORDERED.**

The petitioners sought the reconsideration of the order, for which the RTC required the parties to submit their respective memoranda. In their memorandum, the petitioners insisted that they had an excess payment sufficient to cover the amounts due on the principal.

Nonetheless, on June 8, 2001, the RTC denied the petitioners' motion for reconsideration,[12] to wit:

> The record does not show that plaintiffs have updated their installment payments by depositing the same with this Court, with the interest thereon at the rate they contend to be the true and correct rate agreed upon by the parties.
>
> Hence, even if their contention with respect to the rates of interest is true and correct, they are in default just the same in the payment of their principal obligation.
>
> WHEREFORE, the MOTION FOR RECONSIDERATION is denied.

Ruling of the CA

Aggrieved, the petitioners commenced a special civil action for *certiorari* in the CA, ascribing grave abuse of discretion to the RTC when it issued the orders dated May 19, 2000 and June 8, 2001.

On February 19, 2002, the CA rendered the assailed decision dismissing the petition for *certiorari* for lack of merit, and affirming the assailed orders,[13] stating:

---

12 Id. at 93.
13 Id. at 43-48.

Petitioners aver that the respondent Court gravely abused its discretion in finding that petitioners are in default in the payment of their obligation to the private respondent.

We disagree.

The Court below did not excessively exercise its judicial authority not only in setting aside the May 2, 2000 Order, but also in denying petitioners' motion for reconsideration due to the faults attributable to them.

When private respondent Metrobank moved for the reconsideration of the Order of May 2, 2000 which granted the issuance of the writ of preliminary injunction, petitioners failed to oppose the same despite receipt of said motion for reconsideration. The public respondent Court said –

> "For resolution is the Motion for Reconsideration filed by the defendant Metropolitan Bank and Trust Company, dated May 12, 2000, a copy of which was received by Atty. Philip Pantojan for the plaintiffs on May 16, 2000. There is no opposition nor appearance for the plaintiffs this morning at the scheduled hearing of said motion x x x".

Corollarily, the issuance of the Order of June 8, 2001 was xxx based on petitioners' [being] remiss in their obligation to update their installment payments.

The Supreme Court ruled in this wise:

> To justify the issuance of the writ of certiorari, the abuse of discretion on the part of the tribunal or officer must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility.

Petitioners likewise discussed at length the issue of whether or not the private respondent has collected the right interest rate on the loans they obtained from the private respondent, as well as the propriety of the application of escalated interest rate which was applied to their loans by the latter. In the instant petition, questions of fact are not generally permitted, the inquiry being limited essentially to whether the public respondent acted without or in excess of its jurisdiction or with grave abuse of discretion in issuing the questioned Orders, neither is the instant petition available to correct mistakes in the judge's findings and conclusions, nor to cure erroneous conclusions of law and fact, if there be any.

> Certiorari will issue only to correct errors of jurisdiction, not errors of procedure or mistakes in the findings or conclusions of the lower court.

A review of facts and evidence is not the province of the extraordinary remedy of certiorari.

> **WHEREFORE**, the petition is **DENIED** for lack of merit. The assailed Orders of the respondent Court are **AFFIRMED.**
>
> **SO ORDERED.**

The petitioners moved for reconsideration of the decision, but the CA denied the motion for lack of merit on May 7, 2002.[14]

Hence, this appeal.

Issues

The petitioners pose the following issues, namely:

1. Whether or not the Presiding Judge in issuing the 08 June 2001 Order, finding the petitioners in default of their obligation with the Bank, has committed grave abuse of discretion amounting to excess or lack of jurisdiction as the same run counter against the legal principle enunciated in the Almeda Case;

2. Assuming that the Presiding Judge did not excessively exercise [his] judicial authority in the issuance of the assailed orders, notwithstanding [their] consistency with the legal principle enunciated in the Almeda Case, whether or not the petitioners can avail of the remedy under Rule 65, taking into consideration the sense of urgency involved in the resolution of the issue raised;

3. Whether or not the Petition lodged before the Court of Appeals presented a question of fact, and hence not within the province of the extraordinary remedy of *certiorari*.[15]

The petitioners argue that the foreclosure of their mortgage was premature; that they could not yet be considered in default under the ruling in *Almeda v. Court of Appeals*,[16] because the trial court was still to determine with certainty the exact amount of their obligation to Metrobank; that they would likely prevail in their action because Metrobank had altered the terms of the loan agreement by increasing the interest rates without their prior assent; and that unless the foreclosure sale was restrained their action would be rendered moot. They urge that despite finding no grave abuse of discretion on the part of the RTC in denying their application for preliminary

---

14 Id. at 68-69.
15 Id. at 20-21.
16 G.R. No. 113412, April 17, 1996, 256 SCRA 292.

injunction, the CA should have nonetheless issued a writ of *certiorari* considering that they had no other plain and speedy remedy.

Metrobank counters that *Almeda v. Court of Appeals* was not applicable because that ruling presupposed the existence of the following conditions, to wit: (*a*) the escalation and de-escalation of the interest rate were subject to the agreement of the parties; (*b*) the petitioners as obligors must have protested the highly escalated interest rates prior to the application for foreclosure; (*c*) they must not be in default in their obligations; (*d*) they must have tendered payment to Metrobank equivalent to the principal and accrued interest calculated at the originally stipulated rate; and (*e*) upon refusal of Metrobank to receive payment, they should have consigned the tendered amount in court.[17] It asserts that the petitioners' loans, unlike the obligation involved in *Almeda v. Court of Appeals*, had already matured prior to the filing of the case, and that they had not tendered or consigned in court the amount of the principal and the accrued interest at the rate they claimed to be the correct one.[18]

Based on the foregoing, the issues to be settled are, *firstly*, whether the petitioners had a cause of action for the grant of the extraordinary writ of *certiorari*; and, *secondly*, whether the petitioners were entitled to the writ of preliminary injunction in light of the ruling in *Almeda v. Court of Appeals*.

Ruling

The appeal has no merit.

To begin with, the petitioners' resort to the special civil action of *certiorari* to assail the May 19, 2000 order of the RTC (reconsidering and setting aside its order dated May 2, 2000 issuing the temporary restraining

---

17 *Rollo*, pp. 174-175
18 Id. at 174-175

order against Metrobank to stop the foreclosure sale) was improper. They thereby apparently misapprehended the true nature and function of a writ of *certiorari*. It is clear to us, therefore, that the CA justly and properly dismissed their petition for the writ of *certiorari*.

We remind that the writ of *certiorari* – being a remedy narrow in scope and inflexible in character, whose purpose is to keep an inferior court within the bounds of its jurisdiction, or to prevent an inferior court from committing such grave abuse of discretion amounting to excess of jurisdiction, or to relieve parties from arbitrary acts of courts (*i.e.*, acts that courts have no power or authority in law to perform) – is not a general utility tool in the legal workshop,[19] and cannot be issued to correct every error committed by a lower court.

In the common law, from which the remedy of *certiorari* evolved, the writ of *certiorari* was issued out of Chancery, or the King's Bench, commanding agents or officers of the inferior courts to return the record of a cause pending before them, so as to give the party more sure and speedy justice, for the writ would enable the superior court to determine from an inspection of the record whether the inferior court's judgment was rendered without authority.[20] The errors were of such a nature that, if allowed to stand, they would result in a substantial injury to the petitioner to whom no other remedy was available.[21] If the inferior court acted without authority, the record was then revised and corrected in matters of law.[22] The writ of *certiorari* was limited to cases in which the inferior court was said to be exceeding its jurisdiction or was not proceeding according to essential

---

19 *Estares v. Court of Appeals*, G.R. No. 144755, June 8, 2005, 459 SCRA 604, 620-621.

20 *Cushman v. Commissioners' Court of Blount County*, 49 So. 311, 312, 160 Ala. 227 (1909); *Ex parte Hennies*, 34 So.2d 22, 23, 33 Ala. App. 377 (1948); *Schwander v. Feeney's Del. Super.*, 29 A.2d 369, 371 (1942).

21 *Worcester Gas Light Co. v. Commissioners of Woodland Water Dist. in Town of Auburn*, 49 N.E.2d 447, 448, 314 Mass. 60 (1943).

22 *Toulouse v. Board of Zoning Adjustment*, 87 A.2d 670, 673, 147 Me. 387 (1952).

requirements of law and would lie only to review judicial or quasi-judicial acts.[23]

The concept of the remedy of *certiorari* in our judicial system remains much the same as it has been in the common law. In this jurisdiction, however, the exercise of the power to issue the writ of *certiorari* is largely regulated by laying down the instances or situations in the *Rules of Court* in which a superior court may issue the writ of *certiorari* to an inferior court or officer. Section 1, Rule 65 of the *Rules of Court* compellingly provides the requirements for that purpose, *viz*:

> Section 1. *Petition for certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
>
> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46. (1a)

Pursuant to Section 1, *supra*, the petitioner must show that, *one*, the tribunal, board or officer exercising judicial or quasi-judicial functions acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction, and, *two*, there is neither an appeal nor any plain, speedy and adequate remedy in the ordinary course of law for the purpose of amending or nullifying the proceeding.

Considering that the requisites must concurrently be attendant, the herein petitioners' stance that a writ of *certiorari* should have been issued even if the CA found no showing of grave abuse of discretion is absurd. The

---

[23] *Greater Miami Development Corp. v. Pender*, 194 So. 867, 868, 142 Fla. 390 (1940).

commission of grave abuse of discretion was a fundamental requisite for the writ of *certiorari* to issue against the RTC. Without their strong showing either of the RTC's lack or excess of jurisdiction, or of grave abuse of discretion by the RTC amounting to lack or excess of jurisdiction, the writ of *certiorari* would not issue for being bereft of legal and factual bases. We need to emphasize, too, that with *certiorari* being an extraordinary remedy, they must strictly observe the rules laid down by law for granting the relief sought.[24]

The sole office of the writ of *certiorari* is the correction of errors of jurisdiction, which includes the commission of grave abuse of discretion amounting to lack of jurisdiction. In this regard, mere abuse of discretion is not enough to warrant the issuance of the writ. The abuse of discretion must be grave, which means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction.

Secondly, the Court must find that the petitioners were not entitled to enjoin or prevent the extrajudicial foreclosure of their mortgage by Metrobank. They were undeniably already in default of their obligations the performance of which the mortgage had precisely secured. Hence, Metrobank had the unassailable right to the foreclosure. In contrast, their right to prevent the foreclosure did not exist. Hence, they could not be validly granted the injunction they sought.

The foreclosure of a mortgage is but a necessary consequence of the non-payment of an obligation secured by the mortgage. Where the parties

---

[24] *Serrano v. Galant Maritime Services, Inc*., G.R. No. 151833, August 7, 2003, 408 SCRA 523, 526; *Manila Midtown Hotels & Land Corp. v. NLRC*, G. R. No. 118397, March 27, 1998, 288 SCRA 259, 265.

have stipulated in their agreement, mortgage contract and promissory note that the mortgagee is authorized to foreclose the mortgage upon the mortgagor's default, the mortgagee has a clear right to the foreclosure in case of the mortgagor's default. Thereby, the issuance of a writ of preliminary injunction upon the application of the mortgagor will be improper.[25] Mindful that an injunction would be a limitation upon the freedom of action of Metrobank, the RTC justifiably refused to grant the petitioners' application for the writ of preliminary injunction. We underscore that the writ could be granted only if the RTC was fully satisfied that the law permitted it and the emergency demanded it.[26] That, needless to state, was not true herein.

In *City Government of Butuan v. Consolidated Broadcasting System (CBS), Inc.*,[27] the Court restated the nature and concept of a writ of preliminary injunction in the following manner, to wit:

> A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order requiring a party or a court, an agency, or a person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case it is known as a preliminary mandatory injunction. Thus, a prohibitory injunction is one that commands a party to refrain from doing a particular act, while a mandatory injunction commands the performance of some positive act to correct a wrong in the past.
>
> **As with all equitable remedies, injunction must be issued only at the instance of a party who possesses sufficient interest in or title to the right or the property sought to be protected. It is proper only when the applicant appears to be entitled to the relief demanded in the complaint, which must aver the existence of the right and the violation of the right, or whose averments must in the minimum constitute a *prima facie* showing of a right to the final relief sought. Accordingly, the conditions for the issuance of the injunctive writ are: (*a*) that the right to be protected exists *prima facie*; (*b*) that the act sought to be enjoined is violative of that right; and (*c*) that there is an urgent and paramount necessity for the writ to prevent serious damage. An injunction will not issue to protect a right not *in esse*, or a right which is merely contingent and may never arise; or to restrain an act which does not give rise to a cause of action; or to prevent the**

---

[25] *Equitable PCI Bank, Inc. v. OJ-Mark Trading, Inc.*, G.R. No. 165950, August 11, 2010, 628 SCRA 79, 91-92.

[26] *China Banking Corporation v. Ciriaco*, G.R. No. 170038, July 11, 2012.

[27] G.R. No. 157315, December 1, 2010, 636 SCRA 320, 336-337.

> **perpetration of an act prohibited by statute. Indeed, a right, to be protected by injunction, means a right clearly founded on or granted by law or is enforceable as a matter of law.** (Bold emphasis supplied)

Thirdly, the petitioners allege that: (*a*) Metrobank had increased the interest rates without their assent and without any basis; and (*b*) they had an excess payment sufficient to cover the amounts due. In support of their allegation, they submitted a table of the interest payments, wherein they projected what they had actually paid to Metrobank and contrasted the payments to what they claimed to have been the correct amounts of interest, resulting in an excess payment of ₱605,557.81.

The petitioners fail to convince.

We consider to be unsubstantiated the petitioners' claim of their lack of consent to the escalation clauses. They did not adduce evidence to show that they did not assent to the increases in the interest rates. The records reveal instead that they requested only the reduction of the interest rate or the restructuring of their loans.[28] Moreover, the mere averment that the excess payments were sufficient to cover their accrued obligation computed on the basis of the stipulated interest rate cannot be readily accepted. Their computation, as their memorandum submitted to the RTC would explain,[29] was too simplistic, for it factored only the principal due but not the accrued interests and penalty charges that were also stipulated in the loan agreements.

It is relevant to observe in this connection that escalation clauses like those affecting the petitioners were not void *per se*, and that an increase in the interest rate pursuant to such clauses were not necessarily void. In *Philippine National Bank v. Rocamora*,[30] the Court has said:

---

28 Records, pp. 111-112 and 361.
29 Id. at 351-357
30 G.R. No. 164549, September 18, 2009, 600 SCRA 395, 406-407.

> Escalation clauses are valid and do not contravene public policy. These clauses are common in credit agreements as means of maintaining fiscal stability and retaining the value of money on long-term contracts. To avoid any resulting one-sided situation that escalation clauses may bring, we required in *Banco Filipino* the inclusion in the parties' agreement of a de-escalation clause that would authorize a reduction in the interest rates corresponding to downward changes made by law or by the Monetary Board.
>
> The validity of escalation clauses notwithstanding, we cautioned that these clauses do not give creditors the unbridled right to adjust interest rates unilaterally. As we said in the same *Banco Filipino* case, **any increase in the rate of interest made pursuant to an escalation clause must be the result of an agreement between the parties.** The minds of all the parties must meet on the proposed modification as this modification affects an important aspect of the agreement. There can be no contract in the true sense in the absence of the element of an agreement, *i.e.*, the parties' mutual consent. Thus, **any change must be mutually agreed upon, otherwise, the change carries no binding effect**. A stipulation on the validity or compliance with the contract that is left solely to the will of one of the parties is void; the stipulation goes against the principle of mutuality of contract under Article 1308 of the Civil Code.

We reiterate that injunction will not protect contingent, abstract or future rights whose existence is doubtful or disputed.[31] Indeed, there must exist an actual right,[32] because injunction will not be issued to protect a right not *in esse* and which may never arise, or to restrain an act which does not give rise to a cause of action. At any rate, an application for injunctive relief is strictly construed against the pleader.[33]

Nor do we discern any substantial controversy that had any real bearing on Metrobank's right to foreclose the mortgage. The mere possibility that the RTC would rule in the end in the petitioners' favor by lowering the interest rates and directing the application of the excess payments to the accrued principal and interest did not diminish the fact that when Metrobank filed its application for extrajudicial foreclosure they were already in default as to their obligations and that their short-term loan of ₱4,400,000.00 had already matured. Under such circumstances, their

---

[31] *Boncodin v. National Power Corporation Employees Consolidated Union (NECU)*, G.R. No. 162716, September 27, 2006, 503 SCRA 611, 623.

[32] *Duvaz Corporation v. Export and Industry Bank*, G.R. No. 163011, June 7, 2007, 523 SCRA 405, 413-414; citing *Almeida v. Court of Appeals*, G.R. No. 159124, January 17, 2005, 448 SCRA 681.

[33] *St. James College of Parañaque v. Equitable PCI Bank*, G.R. No. 179441, August 9, 2010, 627 SCRA 328, 350.

application for the writ of preliminary injunction could not but be viewed as a futile attempt to deter or delay the forced sale of their property.

Lastly, citing the ruling in *Almeda v. Court of Appeals*, to the effect that the issuance of a preliminary injunction pending the resolution of the issue on the correct interest rate would be justified, the petitioners submit that they could be rightly considered in default only after they had failed to settle the exact amount of their obligation as determined by the trial court in the main case.

The petitioners' reliance on the ruling in *Almeda v. Court of Appeals* was misplaced.

Although it is true that the ruling in *Almeda v. Court of Appeals* sustained the issuance of the preliminary injunction pending the determination of the issue on the interest rates, with the Court stating:

> In the first place, because of the dispute regarding the interest rate increases, an issue which was never settled on merit in the courts below, the exact amount of petitioners' obligations could not be determined. Thus, the foreclosure provisions of P.D. 385 could be validly invoked by respondent bank only after settlement of the question involving the interest rate on the loan, and only after the spouses refused to meet their obligations following such determination.[34] x x x.

Almeda v. Court of Appeals involved circumstances that were far from identical with those obtaining herein. To start with, *Almeda v. Court of Appeals* involved the mandatory foreclosure of a mortgage by a government financial institution pursuant to Presidential Decree No. 385[35] should the arrears reach 20% of the total outstanding obligation. On the other hand, Metrobank is not a government financial institution. Secondly, the petitioners in *Almeda v. Court of Appeals* were not yet in default at the time they brought the action questioning the propriety of the interest rate

---

[34] *Supra* note 16, at 324.

[35] *Requiring Government Financial Institutions to Foreclose Mandatorily All Loans with Arrearages, including Interest and Charges amounting to at least Twenty Percent (20%) of the Total Outstanding Obligation.*

increases, but the herein petitioners were already in default and the mortgage had already been foreclosed when they assailed the interest rates in court. Thirdly, the Court found in *Almeda v. Court of Appeals* that the increases in the interest rates had been made without the prior assent of the borrowers, who had even consistently protested the increases in the stipulated interest rate. In contrast, the Court cannot make the same conclusion herein for lack of basis. Fourthly, the interest rates in *Almeda v. Court of Appeals* were raised to such a very high level that the borrowers were practically enslaved and their assets depleted, with the interest rate even reaching at one point a high of 68% *per annum*. Here, however, the increases reached a high of only 31% *per annum*, according to the petitioners themselves. Lastly, the Court in *Almeda v. Court of Appeals* attributed good faith to the petitioners by their act of consigning in court the amounts of what they believed to be their remaining obligation. No similar tender or consignation of the amount claimed by the petitioners herein to be their correct outstanding obligation was made by them.

In fine, the petitioners in *Almeda v. Court of Appeals* had the existing right to a writ of preliminary injunction pending the resolution of the main case, but the herein petitioners did not. Stated otherwise, no writ of preliminary injunction to enjoin an impending extrajudicial foreclosure sale should issue except upon a clear showing of a violation of the mortgagors' unmistakable right to the injunction.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the decision promulgated on February 19, 2002; and **ORDERS** the petitioners to pay the costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.

MARIA LOURDES P. A. SERENO
Chief Justice