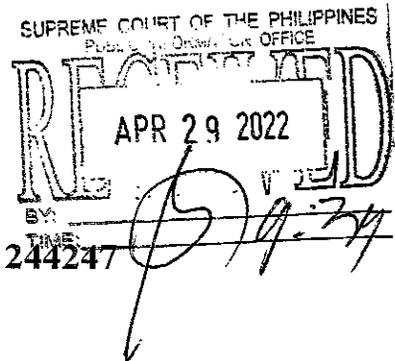




Republic of the Philippines
 Supreme Court
 Manila

THIRD DIVISION



UNITED COCONUT PLANTERS
 BANK, INC.,

G.R. No. 244247

Petitioner,

Present:

LEONEN, J.,
 Chairperson,
 CARANDANG,
 ZALAMEDA,
 GAERLAN,*
 ROSARIO, JJ.

- versus -

E. GANZON, INC.,
 Respondent.

Promulgated:

November 10, 2021

X-----X

DECISION

CARANDANG, J.:

Before this Court is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court (Rules), assailing the Decision² dated September 26, 2018 and the Resolution³ dated January 10, 2019 of the Court of Appeals (CA) in CA-G.R. CV No. 108833 filed by petitioner United Coconut Planters Bank (UCPB).

Antecedents

Between 1995 and 1998, respondent E. Ganzon, Inc. (EGI) obtained five loans from petitioner UCPB with a total amount of ₱775,000,000.00, broken down as follows:

* Designated as additional Member *vice* Dimaampao, J., per Special Order No. 2839-J dated October 13, 2021.

¹ *Rollo*, pp. 19-58.

² Penned by Associate Justice Manuel M. Barrios, with the concurrence of Associate Justices Japar B. Dimaampao (now a Member of this Court) and Henri Jean Paul B. Inting (now a Member of this Court); *id.* at 67-92.

³ *Id.* at 11-16.

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Date	Loan	Amount
July 12, 1995	Term Loan No. 1 ⁴	₱200,000,000.00
June 10, 1996	Omnibus Line	₱100,000,000.00
April 15, 1996	Term Loan No. 2 ⁵	₱125,000,000.00
August 29, 1997	Term Loan No. 3 (JEXIM Loan) ⁶	₱300,000,000.00
August 13, 1998	Additional Term Loan No. 3 ⁷	₱50,000,000.00
TOTAL		₱775,000,000.00

In December 1998, EGI started to default in paying its amortizations. The parties agreed to restructure the loan by permitting EGI to obtain a short-term loan⁸ in the amount of ₱150,000,000.00 to pay the maturing loan obligations. Of said amount, ₱145,163,000.00 was obtained by EGI and applied to satisfy its credit account with UCPB.

A year later, EGI was still unable to pay its loan obligations to UCPB that had then ballooned to **₱936,434,296.22**, inclusive of accumulated interests and charges. On December 28, 1999, after the waiver of certain penalties and charges, the parties entered into a Memorandum of Agreement (MOA)⁹ whereby the entire total existing obligation of EGI was fixed at **₱915,838,822.50**. EGI agreed to convey in favor of UCPB properties listed in Annex "A" of the MOA (listed properties) comprising of 485 condominium units and parcels of land owned by EGI located at its various projects. In consideration for the transfer of the subject properties in favor of UCPB, the loan obligations of EGI shall be deemed paid and extinguished.¹⁰

The preliminary stipulations in the MOA recognized the total outstanding obligation of EGI as follows:

(A) A of date hereof, **EGI has outstanding obligations due in favor of the BANK, in the aggregate amount of Nine Hundred Fifteen Million Eight Hundred Thirty Eight Thousand Eight Hundred Twenty Two Pesos and 50/100 (₱915,838,822.50), Philippine currency, inclusive of all interest, charges and fees (the "Obligation").**

(B) To satisfy in full and settle the Obligation, the parties hereto have agreed that all the rights to, title and interest of EGI in certain real property registered in the name of and owned by EGI shall be acquired by and transferred in favor of the BANK, subject to the terms and conditions of this Agreement.¹¹ (Emphasis supplied)

⁴ Records, pp. 404-409.

⁵ Id. at 410-415.

⁶ Id. at 416-429.

⁷ Id. at 430-431.

⁸ Id. at 432-437.

⁹ *Rollo*, pp. 274-280.

¹⁰ Id. at 275.

¹¹ Id. at 274.

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Sections 2.1. and 2.2. of the MOA state:

Section 2.1. **Assignment and Conveyance** – Subject to the provisions of this Agreement and the mandatory proscriptions provided under applicable laws, rules and regulations, *EGI hereby assigns, cedes, transfers and conveys in favor of the BANK all its rights to, title and interest in the Property*, consisting of units in the shopping/commercial areas (Ground Floor to the 6th Floor), office spaces (7th Floor to 14th Floor) and condotel (15th Floor to 25th Floor) (hereinafter referred to as the “Condominium Assets”), subject matter of the Memorandum of Agreement, dated December 23, 1989 and the Addendum to the Memorandum of Agreement, dated December 23, 1989, copies of which are attached hereto and made integral parts hereof as Annexes “B” and “B-1” (hereinafter collectively referred to as the “JV Agreements”), and the real property covered by liens of first rank constituted in favor of the BANK identified in Annex “A”, attached hereto, free and clear of all liens and encumbrances, whether statutory or contractual, except for such liens and encumbrances disclosed by EGI to the BANK. EGI further declares and confirms that it shall do and perform, directly or indirectly, all the acts and deeds necessary or required for the transfer and conveyance of the Property to the BANK conformably with the terms and conditions of this Agreement.

Section 2.2. **Consideration** – In consideration for the transfer and conveyance of the Property in favor of the BANK, and the satisfactory performance by EGI of the obligations and undertakings set forth hereunder, the BANK hereby declares and confirms that *the Obligation shall be deemed paid and extinguished*. The BANK further agrees that such payment and extinguishment of the Obligation shall, with prior notice to EGI, be recorded in the books of the BANK in consonance with generally accepted accounting principles meeting the mandatory requirements of the Bangko Sentral ng Pilipinas.¹² (Emphasis and underscoring in the original; italics supplied)

Thereafter, acknowledging the inaccuracies in the valuation of the properties, the parties executed an **Amendment of Agreement (Amendment)**¹³ dated January 18, 2000, wherein the aggregate appraised value of the listed properties was readjusted from ₱1,374,675,560.00¹⁴ to ₱1,419,913,861.00.¹⁵

UCPB instituted foreclosure proceedings on 193 of the 485 of the listed properties, the total appraised value of which was ₱904,491,052.00. However, UCPB only credited EGI with ₱723,592,000.00, the bank’s bid price, explaining that this figure represented 80% of the appraised value of

¹² Id. at 275.

¹³ Id. at 290-291.

¹⁴ Id. at 289.

¹⁵ Id. at 299.

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the assets foreclosed.¹⁶

After the foreclosure, UCPB applied the ₱723,592,000.00 to the partial payment of the principal loan, after deducting interest, charges, and expenses. UCPB then informed EGI that it still had an unpaid indebtedness of ₱226,963,905.50. Thus, UCPB required EGI to submit additional properties to liquidate the loan to which EGI complied. EGI offered 135 additional condominium units in EGI Rufino Plaza. UCPB then asked EGI to execute *dacion en pago* contracts on over 107 of the 135 additional units in EGI Rufino Plaza worth ₱166,127,386.50, leaving behind 28 units supposedly consisting of the lobby, common areas, and valet parking spaces. Nonetheless, the bank acknowledged having received the condominium certificates of title (CCT) of 28 units “for safekeeping.”¹⁷ The CCTs held by the bank for safekeeping included CCT Nos. 12735, 12736, 12738, 12739, 12741, 12742, 12744, 12745, 12747, 12748, 12750, 12751, 1273, 12756, 12759, 12762, 12603, 12604, 12605, 12606, 12609, 12675, 12676, 12677, 12678, 12679, 12680, and 12681.¹⁸ Despite the foreclosure and the *dacion en pago* contracts, UCPB informed EGI that it still had an outstanding balance of ₱60,836,537.00. Thus, UCPB required EGI to assign more properties again.¹⁹

Feeling doubtful, especially after it was accidentally furnished a copy of an internal memorandum²⁰ of UCPB that had contrasting amounts of the loan balance labeled as “ACTUAL” and “DISCLOSED TO EGI,” EGI asserted that it had already overpaid its loan obligation and that UCPB was padding its account. The figures in the “DISCLOSED TO EGI” column computed the unpaid balance of the loan obligations of EGI to be ₱226,967,194.80, the amount which UCPB demanded from EGI. The figures in the “ACTUAL” column calculated the remaining loan obligations of EGI to be only ₱146,849,412.58. Thus, EGI instituted an action for Annulment of Foreclosure, Annulment of Dacion En Pago, Rescission/ Amendment/ Annulment of Contract, Collection, and Damages before the Regional Trial Court (RTC) of Pasay.²¹

In its Complaint,²² EGI claimed that it was a victim of the fraud employed by UCPB in the collection of its loans. EGI attached an internal memorandum dated February 22, 2001 of the bank, purportedly showing that the actual or correct amount of its remaining obligation was less than what the bank had disclosed to EGI in the MOA.²³ The internal memorandum also allegedly showed that the bank padded the transaction cost due by ₱10,671,094.52 and the costs of advances for technical study in

¹⁶ Id. at 79.
¹⁷ Records, pp. 309-310.
¹⁸ Id.
¹⁹ *Rollo*, p. 80.
²⁰ Id. at 300-304.
²¹ Id. at 72.
²² Records, pp. 1-50.
²³ Id. at 3-4.



the amount of ₱205,800.00 was entered twice.²⁴ EGI averred that it was fraudulently overcharged by the bank by bloating and padding charges.²⁵ EGI also lamented that UCPB appropriated unto itself ownership and use of the movables and fixtures found in the units in EGI Rufino Plaza without compensating EGI for their value in the amount of ₱35,000,000.00.²⁶ EGI pointed out that 28 of the additional units UCPB asked for were being held by the bank for safekeeping purposes only. There was no agreement consummated between the parties for the transfer of said units. EGI maintained that the bank does not have any right to withhold possession of the corresponding CCTs over these units. EGI prayed that a writ of replevin be issued, directing UCPB to return the 28 certificates of title and that it be awarded a proportionate share in the income of the hotel business in EGI Rufino Plaza or, in the alternative, that it be awarded payment of reasonable rent for the properties.²⁷ EGI also argued that the foreclosure transactions are partially voidable due to the fraud UCPB allegedly perpetuated. EGI prayed that it be credited for the actual value of the foreclosed properties in the amount of ₱904,491,052.00, instead of the valuation fixed by the bank which is only 80% of the actual value or only ₱723,592,000.00. Since EGI maintained that its total obligation is only ₱769,294,804.21, there is excess proceeds from the foreclosure amounting to ₱135,196,247.77.²⁸ EGI also sought the annulment of the *dacion en pago* contracts as it maintained that it no longer had any outstanding obligation to the bank.²⁹ EGI also asked the court for the cancellation of the mortgage liens on the remaining 46 listed properties in the MOA not foreclosed by UCPB nor transferred by *dacion en pago*.³⁰ EGI also requested for the modification of the MOA for the document to reflect the alleged correct amount of EGI's liability of ₱769,294,804.23 instead of ₱915,838,822.50.³¹ EGI also pleaded for a complete accounting of the loan proceeds, interests, charges, and costs, and the payment of actual, compensatory, moral, exemplary, and temperate damages, attorney's fees, and legal interest.³² Lastly, EGI asked for the issuance of a writ of preliminary attachment to instruct the sheriff to attach properties of the bank needed to answer for the award the court may grant in its favor.³³

In its Answer with Counterclaims,³⁴ UCPB clarified the reason for the two computations in the internal memorandum EGI obtained, one labeled as "ACTUAL," while the other was identified as "DISCLOSED TO EGI." The bank explained that Bangko Sentral ng Pilipinas (BSP) Circular No. 202 and Section X305.4 of the Manual of Regulations for Banks prohibit banks from accruing in their books interest on loans that have become non-performing.

²⁴ Id. at 10.
²⁵ Id. at 14-26.
²⁶ Id. at 33, 44-45, 49.
²⁷ Id. at 36, 42, 45, 49-50.
²⁸ Id. at 38-39, 46.
²⁹ Id. at 39-41, 47.
³⁰ Id. at 41, 47.
³¹ Id. at 42, 47.
³² Id. at 44, 48-49.
³³ Id. at 45-46.
³⁴ Id. at 338-402.

The bank stated that the rationale for this rule is to prevent a bank from overstating its income to improve its financial condition on paper by including uncollected interests that it may later be unable to collect. UCPB denied making any false representations nor concealing any material fact from EGI as regards its outstanding loan obligation.³⁵ It also denied padding or bloating the estimated transaction costs.³⁶ The bank also insisted that there is nothing fraudulent in the foreclosure of EGI's properties at ₱723,592,000.00 since there is nothing in the MOA that requires the bank to foreclose the listed properties at their appraised values.³⁷ The bank also maintained that it properly charged EGI the transaction costs pursuant to Section 6.3 of the MOA.³⁸ The bank also averred that EGI has no cause of action for the payment of ₱35,000,000.00 plus interest for the furniture, fixtures, and other movables found in the units in EGI Rufino Plaza. The bank blamed EGI's filing of a criminal case against the bank officers for stalling the negotiations for the transfer of the movable properties to the bank. UCPB suggested that EGI should be charged for the storage, care, and maintenance of the movable properties.³⁹ As regards the additional 28 units comprising of common areas and valet parking slots, the bank opined that there is no cause of action for a writ of replevin for the return of the corresponding CCTs and for accounting of income nor the payment of rent. The bank posited that the common areas belong to all unit owners in the building, including the bank, and thus cannot be appropriated by EGI for itself although it had secured titles under its name. UCPB added that EGI continues to collect fees for the valet parking spaces although they are supposed to be common areas.⁴⁰

In an "Urgent Motion for Production and Inspection of Documents" dated September 27, 2005, EGI prayed that UCPB be ordered to produce, inspect, and copy all its records pertaining to its transactions with EGI. The motion was granted in an Order dated November 30, 2005. However, UCPB failed to comply. Thus, EGI filed a Motion to declare UCPB in default. On April 20, 2007, the RTC declared UCPB in default and deemed it to have waived its right to present evidence. EGI was directed to present its evidence *ex parte*.⁴¹

Ruling of the Regional Trial Court

On June 28, 2016 the RTC rendered its Decision,⁴² the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff EGI and against defendant UCPB, declaring that the loan obligations of

³⁵ Records, pp. 388-393

³⁶ Id. at 396-397.

³⁷ Id. at 397.

³⁸ Id.

³⁹ Id. at 398.

⁴⁰ Id. at 399.

⁴¹ *Rollo*, pp. 355-356.

⁴² Penned by Judge Jesus B. Mupas; id. at 349-384

plaintiff EGI to defendant UCPB are deemed fully paid, and ordering defendant UCPB to pay the plaintiff the following sums to wit:

1. The excess foreclosure proceeds in the amount of P158,378,177.82, plus legal interest of 12% per annum from April 13, 2000;
2. The proceeds of the *dacion en pago* transactions in the amount of P166,127,368.50 plus legal interest of 12% per annum from May 8, 2001;
3. The value of the movables, furniture, fixtures, and equipment amounting to P32, 296,777.78 plus legal interest of 12% per annum from April 13, 2000;
4. The value of the 28 additional units in the amount of P87,578,846.60 plus legal interest of 12% per annum from April 13, 2000;
5. Court filing fees in the amount of P1,552,403.50;
6. **Moral damages** in the amount of P30,000,000.00;
7. **Exemplary damages** in the amount of P10,000,000.00;
8. **Compensatory Damages** for business losses, foregone income and foregone business opportunities in the amount of **Php 30,000,000.00**;
9. **Attorney's fees** equivalent to 10% of all amounts due the plaintiff;
10. Cost of suit;

Defendant UCPB is further ordered to execute release of mortgage documents on the rest of the properties of plaintiff which are still encumbered with real estate mortgages as guarantee for the already paid loan obligations of the plaintiff.

SO ORDERED.⁴³ (Emphases in the original)

The RTC held that UCPB's act of foreclosing the properties at valuations lower than those agreed upon in the MOA and the Amendment amounted to a breach of contract. The RTC explained that the foreclosure and *dacion en pago* accomplished subsequent to the signing of the MOA were merely for the purpose of documenting the transfer of ownership already made when the MOA was signed. For the RTC, UCPB was bound to follow the valuation of the properties in the MOA and the Amendment when it implemented the conveyance of title through foreclosure and *dacion en pago* as its contractual obligation. The RTC also emphasized that the fact that the MOA and the Amendment were prepared by UCPB gives more reason to bind the bank on the property valuation fixed in the MOA.⁴⁴ UCPB committed breach of contract when it foreclosed some of the properties of EGI at merely P723,592,000.00 as the correct valuation is P904,491,052, the amount that must be deemed to have been paid to the bank when the foreclosure was effected. Since the valuation of the properties subject of *dacion en pago*, P166,127,368.50, was consistent with the MOA and the Amendment, the total payments from the foreclosure and *dacion en pago* of

⁴³ Id. at 383-384.

⁴⁴ Id. at 368.

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EGI's properties amounted to ₱1,070,719,368.50.⁴⁵

With regard to the determination of the total principal obligation of EGI, the RTC agreed with the pronouncement of the CA in a related case docketed as CA-G.R. SP No. 81385 that it should be ₱618,653,963.46 as it is the figure that appears from documents prepared by UCPB.⁴⁶ At this juncture, it must be clarified that CA-G.R. SP No. 81385 involves a petition for review under Rule 43 filed by EGI, assailing the dismissal by the BSP of its administrative complaint against UCPB and its officers for their alleged irregular and unsound banking practices. This case was later elevated to the Court through consolidated petitions for review on *certiorari* docketed as G.R. Nos. 168859 & 168897. In the consolidated cases, the Court upheld the order of the CA to remand the case to the BSP for further proceedings.

On the issue of interest due on EGI's loans, the RTC found that UCPB is passing over to EGI the 5% interest it is supposed to pay to Development Bank of the Philippines for availing the Export-Import Bank of Japan funds that it loaned to EGI. This interest is on top of the 12% interest on the loan that constitutes padding and bloating of interest charges.⁴⁷

Ruling of the Court of Appeals

On September 26, 2018, the CA rendered its Decision,⁴⁸ the dispositive portion of which reads:

WHEREFORE, premises considered, the Decision dated 28 June 2016 of the Regional Trial Court, Branch 112, Pasay City is **AFFIRMED WITH MODIFICATION**. The dispositive portion is modified to read as follows:

“WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff EGI and against defendant UCPB, declaring that the loan obligations of plaintiff EGI to defendant UCPB are deemed fully paid, and ordering defendant UCPB to pay the plaintiff the following sums, to wit:

(1) The excess proceeds from the foreclosure sale and the dacion en pago transactions in the amount of One Hundred Fifty Four Million Seven Hundred Seventy Nine Thousand Five Hundred Ninety Eight Pesos (P154,779.598.00), plus legal interest of twelve percent (12%) per annum from 08 May 2001 until 30 June 2013, and thereafter at the rate of six percent (6%) per annum until finality of this Decision.

(2) The value of the movables, furniture, fixtures, and equipment amounting to Thirty Two Million Two Hundred Ninety Six Thousand Seven Hundred Seventy Seven Pesos

⁴⁵ Id. at 369.

⁴⁶ Id. at 371.

⁴⁷ Id. at 373.

⁴⁸ Supra note 2.

and Seventy Eight Centavos (P32,296,777.78), plus legal interest of twelve percent (12%) per annum from 08 May 2001 until 30 June 2013, and thereafter at the rate of six percent (6%) per annum until finality of this Decision.

(3) The value of the twenty eight (28) additional units in the amount of Eighty Seven Million Five Hundred Seventy Eight Thousand Eight Hundred Forty Six Pesos and Sixty Centavos (P87,578,846.60), plus legal interest of twelve percent (12%) per annum from 08 May 2001 until 30 June 2013, and thereafter at the rate of six percent (6%) per annum until finality of this Decision.

(4) Court filing fees in the amount of One Million Five Hundred Fifty Two Thousand Four Hundred Three Pesos and Fifty Centavos (P1,552,403.50).

(5) Moral damages in the amount of Thirty Million Pesos (P30,000,000.00).

(6) Exemplary damages in the amount of Ten Million Pesos (P10,000,000.00).

(7) Temperate damages for business losses, foregone income and foregone business opportunities in the amount of Twenty Five Million Pesos (P25,000,000.00).

(8) Attorney's fees equivalent to ten percent (10%) of all amounts due the plaintiff.

(9) Cost of suit.

All the monetary awards, including accrued legal interests thereon up to the finality of this Decision, shall be consolidated and shall thereafter earn legal interest at the rate of six percent (6%) per annum until full payment.

Defendant UCPB is further ordered to execute release of mortgage over the rest of the properties of plaintiff EGI which still carries the encumbrance, and physically deliver the respective certificates of title to the latter. If after the finality of this Decision, defendant-appellant UCPB still fails to perform and comply with this directive, then the Register of Deeds of Pasay City shall enter, record, and annotate the release of the mortgage lien on the certificates of title concerned over the mortgaged assets of EGI that were not subjected to foreclosure nor assigned by way of dacion en pago.

SO ORDERED.⁴⁹ (Emphasis and italics in the original)

⁴⁹ Rollo, pp. 89-92.

The CA declared that after signing the MOA, interests and penalties shall no longer run against EGI because the loan is deemed fully paid.⁵⁰ The CA held that the RTC was correct in not allowing UCPB to undervalue the assets below the agreed appraised value. EGI should be credited with the full amount of their stipulated appraised value, which totals ₱904,491,052.00 and not the unilaterally imposed bid price of ₱723,592,000.00. This resulted in the reduction of EGI's remaining loan obligation to only ₱11,347,770.50 (which is equivalent to the difference between EGI's outstanding obligation under the MOA amounting to ₱915,838,822.50 and the valuation agreed upon by the parties in Annex "A" of the MOA, ₱904,491,052.00).⁵¹ In ruling that EGI overpaid its loan obligation to UCPB, the CA presented the computation below:⁵²

TABLE 1	
Foreclosure proceeds, at the valuation agreed upon by the parties in Annex "A" of the Memorandum of Agreement and Amendment of Agreement	P904,491,052.00
Dacion en pago proceeds	(+) P166,127,368.50
SUBTOTAL:	P1,070,618,420.50
(Less) EGI's outstanding obligation, as per the Memorandum of Agreement dated December 29, 1999	(-) P915,838,822.50
EXCESS:	P154,779,598.00

The CA also agreed with the RTC in allowing the transaction costs for the foreclosure proceedings to be charged against the account of EGI as it is an enforcement of a security arrangement falling under sub-paragraph (a) of Section 3.1⁵³. Thus, the CA approved the allowance of the expenses and charges listed below⁵⁴ to be deducted from the foreclosure proceeds:

TABLE 2	
Filing Fee for foreclosure of Real Estate Mortgage (REM)	P4,595,028.00
Sheriff's posting on foreclosure of REM	P48.00
(Additional) Sheriff's posting on foreclosure of	P2.00

⁵⁰ Id. at 78, 275.

⁵¹ Id. at 79-80.

⁵² Id. at 80.

⁵³ Section 3.1 of the MOA states:

Section 3.1. **Authority of the BANK** – EGI acknowledges, declares and confirms that the BANK shall have the discretion in determining the mode of conveyance and transfer of the title to the Property in the name of the BANK (or the designated transferees, as the case may be) as provided under applicable laws, statutes, rules and regulations. EGI further declares and confirms that the BANK may:

- (a) enforce the rights and remedies of the BANK provided under the existing security arrangements executed between EGI and the BANK covering the Property;
- (b) require EGI to assign the Property, by way of dacion en pago, in favor of the BANK;

x x x x

In the event the Bank exercises and implements any of the alternatives specified in Section 3.1. (b), (c) and (d) above, all taxes, charges, fees, costs and expenses arising from the completion of such alternatives shall be for the account of the BANK.

⁵⁴ *Rollo*, p. 82.

REM	
Legal Research Fund	P45,950.28
Notarial Commission	P18,089,900.00
Registration Fee of Certificate of Sale	P1,631,590.00
Publication of Legal Notice of Foreclosure	P673,920.00
Documentary Stamp Tax	P10,853,880.00
Creditable Withholding Tax	P36,179,600.00
Docket Fee	P452.00
Deposit for Costs and Sheriff's Fee	P700.00
Legal Research Fund	P20.00
Docket Fee and Clerk's Commission	P50.00
Judiciary Development Fund	P300.00
TOTAL	P72,071,440.28

However, transaction costs for several *dacion en pago* contracts were held to be for the account of UCPB since Section 3.1(b)⁵⁵ of the MOA provides that the bank assumed the obligation to defray any and all taxes, charges, fees, costs, and other expenses expended resulting from the *dacion en pago*.⁵⁶

With regard to the furniture, fixtures, equipment, and other movables contained in the units, the CA agreed with the ruling of the RTC that UCPB should compensate EGI the amount of ₱32,216,777.78 representing the depreciated value of the aforementioned items as of the execution of the MOA on December 8, 1999.⁵⁷

The CA also declared that the RTC rightfully ordered UCPB to pay the appraised value of the 28 remaining units comprising the lobby, corridors, common areas, and valet parking units with an aggregate value of ₱87,578,846.60. The CA found that the aggregate value of EGI's properties that UCPB acquired by way of foreclosure and *dacion en pago* grossly exceeded the amount of EGI's loan account.⁵⁸ The CA agreed with the observation of the RTC that it would be impractical to return the units to EGI because these constitute integral parts of the hotel. The subject units have been deemed useless to EGI because these cannot be used without trespassing into the hotel premises of UCPB.⁵⁹

The CA stated that the total amount UCPB is liable to return to EGI is ₱202,592,782.10, which represents overpayment after *dacion en pago* transactions, value of the furniture, fixtures, equipment and other movables still in possession of UCPB, and the value of the 28 units neither foreclosed nor subjected to *dacion en pago* by UCPB less transaction costs for the foreclosure proceedings that had been determined to be attributable to EGI's account.⁶⁰

⁵⁵ Supra at note 31.

⁵⁶ *Rollo*, p. 83.

⁵⁷ Id. at 83-84.

⁵⁸ Id. at 84-85.

⁵⁹ Id. at 86.

⁶⁰ Id. at 86-87.

TABLE 3	
Overpayment by EGI after foreclosure sale and the <i>dacion en pago</i> transactions (see TABLE 1)	P154,779,598.00
Value of furniture, fixtures, equipment and other movables	P32,296,777.78
Value of Twenty Eight (28) Units	P87,578,846.60
(LESS) Transaction Costs for the Foreclosure of the Real Estate Mortgage (see TABLE 2)	(P72,071,440.28)
TOTAL	P202,592,782.10

The CA added that it is the corresponding obligation of UCPB to release from the mortgage lien, and to return to EGI the assets not foreclosed nor assigned by *dacion en pago*, along with their corresponding certificates of title. If this directive is not complied with by UCPB, then the Register of Deeds of Pasay City should enter and annotate the release of mortgage in the certificates of title concerned.⁶¹

The CA affirmed with modification the award of damages, attorney's fees and costs of suit in favor of UCPB. The CA reclassified the actual and compensatory damages to temperate damages in the amount of ₱25,000,000.00. The CA considered the fraudulent and inequitable practices and excesses of UCPB that led to financial losses and undue prejudice to EGI. The CA explained that EGI must be justly compensated for any foregone income and lost business opportunities.⁶² The CA agreed with the moral and exemplary damages awarded due to the oppressive, and malevolent actions of UCPB. Although EGI is a juridical person incapable of experiencing physical sufferings, mental anguish, fright, serious anxiety, the CA held that it has a reputation to protect that entitles it to moral damages.⁶³

In a Resolution⁶⁴ dated January 10, 2019, the CA denied the Motion for Reconsideration⁶⁵ UCPB filed.⁶⁶

In the present petition,⁶⁷ UCPB maintains that the CA erred in inferring from acts subsequent to the execution of the MOA that the intention of the parties was to "select from among [the listed properties] only those that would serve as payment for EGI's loan obligation."⁶⁸ UCPB argues that the MOA does not expressly nor impliedly create an obligation to credit 100% of the value of the listed properties against the total existing obligation.⁶⁹ UCPB points out that Sections 1.1 and 2.2 of the MOA clearly state that extinguishment of the total existing obligation is conditioned upon EGI's: (1) transfer and conveyance of real property; and (2) performance of

⁶¹ Id. at 87.

⁶² Id. at 87-88.

⁶³ Id. at 88-89.

⁶⁴ Supra note 3.

⁶⁵ *Rollo*, pp. 93-127.

⁶⁶ Id. at 135.

⁶⁷ Id. at 19-58

⁶⁸ Id. at 31.

⁶⁹ Id.

obligations and undertakings as provided in Section 4.0 of the MOA. UCPB insists that nothing in the MOA makes reference to the “fair market value” of the listed properties, much less an obligation for UCPB to credit 100% of such value to EGI’s account upon transfer and conveyance of the listed properties.⁷⁰ UCPB suggests that the true intent of the parties was for EGI to convey all of the listed properties with the value agreed at ₱1,419,913,861.00 and that the total existing obligation of ₱915,838,822.50 would only be extinguished once these properties had been fully conveyed to UCPB.⁷¹ Only 193 of 458 listed assets had been transferred to UCPB.⁷² For UCPB, EGI cannot deduct the agreed valuation of the properties from ₱915,838,822.50. The valuation of the properties does not equate to actual value of money because EGI’s true obligation under the MOA was an obligation to do, *i.e.*, to cede properties in favor of UCPB. Thus, there was no overpayment on the part of EGI.⁷³

UCPB also highlights that EGI’s obligation under the MOA to transfer the properties is an indivisible one despite the number of properties subject of the MOA.⁷⁴ Even assuming *arguendo* that the properties would be acquired at 100% of the “fair market value,” UCPB posits that there was no overpayment because the parties intended to transfer and convey all the properties.⁷⁵

UCPB also contends that the MOA and the Amendment are not contracts of adhesion as these are not ready-made contracts but were products of several months of negotiations and were not “one-sided.”⁷⁶ Thus, UCPB avers that the CA erroneously held in its Resolution that the MOA should be interpreted to benefit EGI at the expense of UCPB.⁷⁷

UCPB also claims that EGI is not entitled to the depreciated value of furniture, fixtures, equipment, and other movable properties in the amount of ₱32,216,777.78 in condominium units acquired through *dacion en pago* because such movable properties are accessories to the condominium units.⁷⁸ Following the concept of accession, by transferring ownership of the units, EGI also necessarily transferred the movables, fixtures, furniture, and equipment essential to the operation and functionality of the condominium and office units.⁷⁹ UCPB adds that it was also the intention of the parties that the transfer of ownership over the real properties would necessarily and simultaneously include the movable properties found therein.⁸⁰

⁷⁰ Id. at 35.
⁷¹ Id. at 36.
⁷² Id. at 39-40.
⁷³ Id. at 44.
⁷⁴ Id.
⁷⁵ Id. at 39.
⁷⁶ Id. at 40-42.
⁷⁷ Id. at 42.
⁷⁸ Id. at 44.
⁷⁹ Id. at 45.
⁸⁰ Id. at 45-46.

With regard to the 28 units consisting of valet parking slots and common areas of EGI Rufino Plaza allegedly not covered by *dacion en pago*, UCPB argues that it has ownership rights over the common areas and parking slots as the owner of over 300 units in EGI Rufino Plaza.⁸¹

As for the transaction costs, UCPB avers that these should be for the account of the vendor, EGI.⁸² UCPB also assails the award of damages and legal interest in favor of EGI.⁸³

On September 21, 2020, Meadow Brook Realty, Inc. (Meadow Brook) filed a Petition-in-Intervention,⁸⁴ claiming that it entered into a Contract to Sell⁸⁵ over 224 condominium units and 76 parking slots in EGI Rufino Plaza, all of which are included in the listed assets in Annex A of the MOA.⁸⁶ Meadow Brook prayed that its rights under the Contract to Sell that arose on the strength of the MOA between UCPB and EGI should be upheld.⁸⁷

In its Comment,⁸⁸ EGI insists that the CA correctly considered the contemporaneous and subsequent acts of the parties in resolving the case and in declaring the MOA and Amendment as contracts of adhesion.⁸⁹ EGI maintains that with the execution of the MOA and the Amendment, its obligation to UCPB was completely extinguished through the payment of ₱1,070,719,368.50 worth of assets.⁹⁰ While EGI agrees with the ruling of the CA that it overpaid the bank, EGI insists that it erred when it considered ₱915,838,822.50 as the total loan obligation instead of ₱746,112,874.18.⁹¹ EGI also reiterates that it should be paid by UCPB for the transaction costs arising from the foreclosure and *dacion en pago* transactions plus legal interest.⁹² EGI also insists that the bank is liable to pay for the value of the furniture, fixtures and other improvements in EGI Rufino Plaza⁹³ and the value of the 28 units in said building that are in the bank's possession.⁹⁴ EGI also states its entitlement to temperate, moral, and exemplary damages, attorney's fees, costs of suit, legal interest, and filing fees.⁹⁵ EGI pleads that the bank should be instructed to execute release of mortgage documents on the rest of the properties it allegedly owns.⁹⁶

81 Id. at 47-48
82 Id. at 48-50.
83 Id. at 50-57.
84 Id. at 499-507.
85 Id. at 512-518.
86 Id. at 502.
87 Id. at 504-506.
88 Id. at 542-578.
89 Id. at 553-557.
90 Id. at 557.
91 Id. at 557-561.
92 Id. at 561-562, 565-567.
93 Id. at 562-563.
94 Id. at 563-565.
95 Id. at 568-575.
96 Id. at 575.



Issues

The issues to be resolved are:

1. Whether the MOA and the Amendment are contracts of adhesion;
2. Whether UCPB is still entitled to charge interest after the execution of the MOA;
3. Whether EGI overpaid its loan obligation to UCPB;
4. Whether transaction costs relative to the transfer of listed assets should be charged to the account of EGI;
5. Whether EGI is entitled to the depreciated value of furniture, fixtures, equipment, and other movable properties in units acquired through *dacion en pago* in the amount of ₱32,216,777.78;
6. Whether EGI is entitled to the value of the 28 units at EGI Rufino Plaza worth ₱87,578,846 in UCPB's possession; and
7. Whether EGI is entitled to damages and legal interest.

Ruling of the Court

The MOA and the Amendment are not contracts of adhesion.

In its Resolution⁹⁷ dated January 10, 2019, the CA stated:

Needless to state, the Memorandum of Agreement was evidently prepared by defendant-appellant with the end in view of extinguishing plaintiff-appellee's obligation. In a sense, the MOA partakes of a contract of adhesion, which is strictly construed against the party that prepared it; hence, in its interpretation, the ambiguity, should be taken against it.⁹⁸

The CA is mistaken. The MOA and the Amendment are not contracts of adhesion.

In *Encarnacion Construction & Industrial Corp. v. Phoenix Ready Mix Concrete Development & Construction, Inc.*,⁹⁹ the Court defined a contract of adhesion as follows:

A contract of adhesion is one wherein one party imposes a ready-made form of contract on the other. It is a contract whereby almost all of its provisions are drafted by one party, with the participation of the other party being limited to affixing his or her signature or "adhesion" to the contract. However, contracts of adhesion are not invalid *per se* as they are binding as ordinary contracts. While the Court has occasionally struck down contracts of adhesion as void, it did so when the weaker party has been imposed

⁹⁷ Id. at 11-16.

⁹⁸ Id. at 15-16

⁹⁹ 817 Phil. 687 (2017).

upon in dealing with the dominant bargaining party and reduced to the alternative of taking it or leaving it, completely deprived of the opportunity to bargain on equal footing. Thus, **the validity or enforceability of the impugned contracts will have to be determined by the peculiar circumstances obtained in each case and the situation of the parties concerned.**¹⁰⁰ (Citations omitted; emphasis supplied)

As correctly pointed out by UCPB, the MOA and Amendment are not ready-made contracts similar to insurance and transportation contracts that EGI had no recourse but to adhere to. Instead, the terms of these contracts are products of extensive negotiations between the parties. These terms are not “one-sided” simply because these were drafted by UCPB as these have been deliberated upon by the parties to give EGI a full and fair opportunity to settle its obligation. This is supported by EGI’s own letter¹⁰¹ dated December 22, 1999 wherein its chief executive officer, Federico C. Gonzalez (Gonzalez), acknowledged that:

In the meantime, as I discussed with you and Mr. E. Gana, we are hoping to sign a Memorandum of Agreement (MOA) next week signifying EGI’s and UCPB’s agreement to settle the obligation via a dacion en pago of EGI Rufino Plaza titles mortgaged to you. Since we have already established at least P 904 million in values of titled units/ areas and approx. P 100 million for the additional areas identified so far, and given EGI’s intent to satisfy your value requirements with even additional collateral, **would it be possible to execute a MOA with appropriate closing conditions and warranties so that the accrual of interest on our obligations can cease by the end of this year?**¹⁰² (Emphasis supplied)

By executing the MOA, EGI received several advantages and concessions, such as the waiver of interest and reduction of its actual outstanding obligation to only ₱915,838,822.50. UCPB waived more than ₱20,596,000.00 in penalties for EGI’s breach of the loan agreements.¹⁰³

Moreover, as an established real estate and construction company, EGI cannot be said to be inexperienced in dealing with UCPB. EGI is presumably knowledgeable of the import and consequences of the MOA and Amendment it executed to settle its loan obligations to the bank.

UCPB is not entitled to charge interest after the execution of the MOA.

Paragraph (A) of the MOA states:

¹⁰⁰ Id. at 694.
¹⁰¹ Records, pp. 441-442.
¹⁰² Id.
¹⁰³ Id. at 384; *rollo*, p. 41.

J

WITNESSETH:

(A) As of date, hereof, EGI has outstanding obligations due in favor of the BANK, in the aggregate amount of Nine Hundred Fifteen Million Eight Hundred Thirty Eight Thousand Eight Hundred Twenty Two Pesos and 50/100 (P915,838,822.50), Philippine currency, **inclusive of all interest, charges and fees** (the "Obligation").¹⁰⁴ [Emphasis supplied]

It is clear from the MOA that the parties, in arriving at their computation of the total loan obligation in the amount of ₱915,838,822.50, intended to include all interest, charges, and fees EGI owes UCPB arising from its principal obligation. The Court has earlier ruled in the related case of *United Coconut Planters Bank v. E. Ganzon, Inc.*¹⁰⁵ that "the MOA entered into by EGI and UCPB serves as a contract between them, and it is the law that should govern their relationship, which neither of the parties can simply abrogate, violate, or disregard."¹⁰⁶ Any prior agreement authorizing UCPB to charge interest on the principal obligation had been superseded by the terms of the MOA.

One of the obligations of EGI in executing the MOA and the Amendment is to cede all 485 listed properties in favor of UCPB. Considering that not all 485 properties listed in the MOA and the Amendment were transferred to UCPB, the obligation of EGI was not fully satisfied, justifying the bank's request for additional assets through the dacion en pago contracts. Nonetheless, the value of the additional properties should not have been grossly disproportionate to the remaining outstanding obligation of EGI.

It must be clarified that the true obligation under the MOA and the Amendment is an obligation to give, *i.e.*, to cede properties in favor of UCPB, regardless of the actual value of the properties listed in the MOA. This agreement superseded any previous security agreement entered into by the parties in relation to the loan EGI obtained from UCPB.

Various modes have been recognized by the parties to transfer the titles of the listed properties in the MOA in favor of the bank based on

¹⁰⁴ *Rollo*, p. 274.

¹⁰⁵ 609 Phil. 104 (2009).

¹⁰⁶ *Id.*

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Section 3.1. of the MOA.¹⁰⁷ It includes, *inter alia*, foreclosure, *dacion en pago*, and creation of a holding company. Though the bank adopted foreclosure as the manner of transferring the titles of the listed properties in the MOA in its favor, it cannot be denied that the true nature of the MOA based on its terms and the letter of EGI, when taken together, is to enter into a *dacion en pago* agreement.

The MOA was in the nature of a *dacion en pago* because the parties intended to transfer properties to the creditor in payment of a debt in money. This is supported by EGI's own letter¹⁰⁸ dated December 22, 1999, wherein Gonzales acknowledged that:

In the meantime, as I discussed with you and Mr. E. Gana, **we are hoping to sign a Memorandum of Agreement (MOA) next week signifying EGI's and UCPB's agreement to settle the obligation via a dacion en pago of EGI Rufino Plaza titles mortgaged to you.** Since we have already established at least P 904 million in values of titled units/ areas and approx. P 100 million for the additional areas identified so far, and given EGI's intent to satisfy your value requirements with even additional collateral, would it be possible to execute a MOA with appropriate closing conditions and warranties so that the accrual of interest on our obligations can cease by the end of this year?¹⁰⁹ (Emphasis and underscoring supplied)

The quoted portion of the letter of EGI reveals the underlying intent of the parties in executing the MOA to satisfy EGI's debts.

The intent of the parties is also readily apparent from the following provisions in the MOA:

WITNESSETH:

(A) As of date, hereof, EGI has outstanding obligations due in favor of the BANK, in the aggregate amount of Nine Hundred Fifteen Million Eight Hundred Thirty Eight

¹⁰⁷

Section 3.1 of the MOA states:

Section 3.1. **Authority of the BANK** – EGI acknowledges, declares and confirms that the BANK shall have the discretion in determining the mode of conveyance and transfer of the title to the Property in the name of the BANK (or the designated transferees, as the case may be as provided under applicable laws, statutes, rules and regulations. EGI further declares and confirms that the BANK may:

(a) enforce the rights and remedies of the BANK provided under the existing security arrangements executed between EGI and the BANK covering the Property;

(b) require EGI to assign the Property, by way of *dacion en pago*, in favor of the BANK;

(c) with the cooperation of EGI, cause the organization and establishment of corporate entities for the purpose of acquiring the outstanding shares of capital stock of such corporations which shall, in turn, hold title to the Property; and

(d) implement such other alternatives as the Bank may reasonably deem appropriate for the purpose of acquiring ownership of and title to the Property.

In the event the Bank exercises and implements any of the alternatives specified in Section 3.1. (b), (c) and (d) above, all taxes, charges, fees, costs and expenses arising from the completion of such alternatives shall be for the account of the BANK.

¹⁰⁸

Records, pp. 441-442.

¹⁰⁹

Id.



Thousand Eight Hundred Twenty Two Pesos and 50/100 (P915,838,82250), Philippine currency, inclusive of all interest, charges and fees (the "Obligation").

(B) To satisfy in full and settle the Obligation, the parties hereto have agreed that all the rights to, title and interest of EGI in certain real property registered in the name of and owned by EGI shall be acquired by and transferred in favor of the BANK, subject to the terms and conditions of this Agreement.

SECTION 1.0.

CONTRACTUAL INTENT

Section 1.1. Intent of the Parties – Subject to the provisions of this Agreement, the parties hereto intend that: (i) all rights to, title and interest of EGI in the real property more particularly identified and described in the schedule attached hereto and made an integral part hereof as Annex "A", together with all improvements thereon, if any (hereinafter with all improvements thereon, if any (hereinafter collectively referred to as the 'Property') shall be transferred and vested in favor of BANK, free and clear of all liens and encumbrances, whether statutory or contractual (except as otherwise disclosed by EGI to the BANK), (ii) *with such transfer and conveyance, the Obligation appearing in the books of the BANK shall be fully paid and extinguished* and (iii) the parties shall implement the appropriate acts and deeds necessary or required for the transfer and conveyance of the Property to the Bank, conformably with the terms and conditions set forth hereunder.

x x x x

Section 2.2. Consideration – In consideration for the transfer and conveyance of the Property in favor of the BANK, and the satisfactory performance by EGI of the obligations and undertakings set forth hereunder, *the BANK hereby declares and confirms that the Obligation shall be deemed paid and extinguished.* The BANK further agrees that such payment and extinguishment of the Obligation shall, with prior notice to EGI, be recorded in the books of the BANK in consonance with generally accepted accounting principles meeting the mandatory requirements of the Bangko Sentral ng Pilipinas.¹¹⁰ (Underscoring in the original; Emphases and italics supplied)

Sections 1.1 and 2.2 of the MOA clearly state that extinguishment of the total existing obligation is conditioned upon EGI's: (1) transfer and conveyance of real property; and (2) performance of obligations and undertakings as provided in the MOA. **The true intent of the parties was**

¹¹⁰ Rollo, p. 275.

for EGI to convey all the 485 listed properties with the agreed value of **₱1,419,913,861.00** and that the total existing obligation of **₱915,838,822.50** would only be extinguished once these properties had been fully conveyed to UCPB.¹¹¹ EGI cannot deduct the agreed valuation of the properties from the total existing obligation. Though the valuation of the properties was considered by the parties in determining the assets to be transferred to the bank, it does not equate to the actual value of money because EGI's real obligation under the MOA was an obligation to give, i.e., to cede properties in favor of UCPB.

Article 1225 of the Civil Code states:

Article 1225. For the purpose of the preceding articles, obligations to give definite things and those which are not susceptible of partial performance shall be deemed to be indivisible.

When the obligation has for its object the execution of a certain number of days of work, the accomplishment of work by metrical units, or analogous things which by their nature are susceptible of partial performance, it shall be divisible.

However, **even though the object or service may be physically divisible, an obligation is indivisible** if so provided by law or **intended by the parties**.

In obligations not to do, divisibility or indivisibility shall be determined by the character of the prestation in each particular case.¹¹² (Emphasis supplied)

In determining the divisibility of an obligation, the following factors may be considered: (1) the will or intention of the parties, which may be expressed or presumed; (2) the objective or purpose of the stipulated prestation; (3) the nature of the thing; and (4) provisions of law affecting the prestation.¹¹³

Here, the controlling factor is the intention of the parties as reflected in the MOA and the Amendment. Though the MOA and Amendment involved numerous properties that EGI undertook to transfer in favor of UCPB, it is clear that the parties intended for all the 485 listed properties to be transferred in exchange for the total extinguishment of EGI's loan obligation in the amount of **₱915,838,822.50**. The MOA and Amendment did not indicate that the parties intended that their corresponding obligations or prestations are susceptible of partial performance. Thus, the obligation to transfer the listed properties in favor of UCPB is an indivisible obligation.

¹¹¹ Id. at 36.

¹¹² CIVIL CODE OF THE PHILIPPINES, Article 1225.

¹¹³ Tolentino, Arturo M. Commentaries and Jurisprudence on the Civil Code [Volume IV] (1991), p. 255.

The issue on the alleged irregularity in the bank's assessment of the listed properties at approximately 80% of the established valuation is irrelevant to the resolution of the case. To reiterate, the extinguishment of EGI's loan obligation is not hinged on the value of the foreclosed properties. The MOA and the Amendment superseded the original loan contracts entered into by the parties. Upon execution of the MOA and the Amendment, the parties intended to fully extinguish EGI's loan obligation in the amount determined by the parties, ₱915,838,822.50, through the transfer of the listed properties in favor of UCPB, regardless of their fair market value or assigned value.

It was erroneous to conclude that EGI overpaid UCPB based on the valuation of the listed properties when the obligation of EGI is to deliver all 485 assets to UCPB, including the units at EGI Rufino Plaza, regardless of their collateral value. The performance of this obligation is not dependent on the fair market value or assigned value of these properties. Regardless of the value of the listed properties, the loan obligation of EGI in the amount of ₱915,838,822.50 is deemed extinguished upon transfer of all these properties to UCPB in compliance with the terms of the MOA. The value of the proceeds from the foreclosure of the listed properties is irrelevant in determining whether the total existing obligation had been satisfied.

However, considering that only 193 of the 485 listed properties were transferred to UCPB, the bank was justified in asking EGI for more properties in exchange for the remaining 292 other listed properties that were not transferred to the bank. Though the obligation to give in the MOA is indivisible and not susceptible of partial performance, the fact that the parties entered into several *dacion en pago* transactions now precludes them from denying the divisible nature with respect to the securities to be assigned.

It must be stressed that the outstanding obligation after the transfers made through the MOA is ₱11,347,770.50. This is computed by deducting the agreed value of the assets transferred pursuant to the MOA from the total obligation acknowledged in the same document. The computation is as follows:

Table A	
Total obligation acknowledged in the MOA	Php 915,838,822.50
Less: Agreed Value of the 193 listed assets transferred pursuant to the MOA	(904,491,052.00)
Remaining obligation after the transfer of the 193 assets transferred pursuant	<u>Php 11,346,770.50</u>

Transfer of properties valued at ₱904,491,052.00 must be liquidated up to that amount, and not just the collateral value of ₱723,592,000.00, because foreclosure was merely a **mode** of transferring the listed assets. The underlying objective of the parties in executing the MOA is to extinguish a

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debt in money by ceding all 485 listed assets. Since not all 485 assets were transferred, the Court finds it equitable to credit the value of the 193 assets in favor of EGI.

Based on the foregoing discussion, the following should be considered payments of EGI and should be deducted from its total loan obligation determined when the MOA and the Amendment were executed: (1) appraised value of 193 of the 485 listed assets foreclosed based on the MOA equivalent to ₱904,491,052; and (2) *dacion en pago* proceeds from the transfer of 107 of 135 additional assets equivalent to ₱166,127,368.50. The excess payment of EGI after deducting all its payments from its outstanding obligation based on the MOA shall be computed as follows:

Table B			AMOUNT
EGI's outstanding obligations based on the MOA dated December 29, 1999			915,838,822.50
LESS:	EGI's payments		
	Appraised Value of Assets Foreclosed (193 of 485 of the listed assets) based on Annex "A" of the Memorandum of Agreement	904,491,052.00	
	Dacion en pago proceeds (from 107 of 135 additional assets)	166,127,368.50	1,070,618,421
EGI's excess payment			(154,779,598.00)

Noticeably, after deducting the payments of EGI, there is an excess payment in the amount of ₱154,779,598.00. The RTC determined the excess payment to be ₱158,378,177.82 while the CA computed it at ₱154,779,598.00. These are similar valuations and the Court deems it proper to adopt the latter amount. This should not be construed to mean that the full amount of excess payment should be returned to EGI as transaction costs chargeable to EGI's account should still be determined and deducted from the amount EGI is entitled to receive.

Transaction costs relative to the foreclosure of 193 assets of EGI should be charged to the account of EGI. However, transaction costs incurred in executing the dacion en pago transactions should not be charged to EGI for being grossly disproportionate to the outstanding obligation after the implementation of the MOA.

Interest, charges, and fees arising from the principal obligation are deemed included in the total loan obligation computed by the parties and can no longer be separately demanded under paragraph (A) of the MOA. However, taxes, charges, fees, costs, and expenses arising out of the

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implementation of the MOA and the Amendment (transaction costs) shall be paid by EGI. Section 6.3 of the MOA states:

Section 6.3. **Taxes, Costs and Expenses** – Taxes, charges, fees, costs and expenses arising out of the execution, delivery and performance of this Agreement and the implementation of the transactions contemplated hereunder shall be paid as and *when such taxes, charges, fees, costs and expenses fall due by EGI.*¹¹⁴ (Emphasis and underscoring in the original, italics supplied)

In addition, Section 3.1 of the MOA states:

Section 3.1. **Authority of the BANK** – EGI acknowledges, declares and confirms that the BANK shall have the discretion in determining the mode of conveyance and transfer of the title to the Property in the name of the BANK (or the designated transferees, as the case may be) as provided under applicable laws, statutes, rules and regulations. EGI further declares and confirms that the BANK may:

- (a) enforce the rights and remedies of the BANK provided under the existing security arrangements executed between EGI and the BANK covering the Property;
- (b) require EGI to assign the Property, by way of dacion en pago, in favor of the BANK;
- (c) with the cooperation of EGI, cause the organization and establishment of corporate entities for the purpose of acquiring the outstanding shares of capital stock of such corporations which shall, in turn, hold title to the Property; and
- (d) implement such other alternatives as the BANK may reasonably deem appropriate for the purpose of acquiring ownership of and title to the Property.

In the event the Bank exercises and implements any of the alternatives specified in Section 3.1. (b), (c) and (d) above, all taxes, charges, fees, costs and expenses arising from the completion of such alternatives shall be for the account of the BANK.¹¹⁵ (Emphasis and underscoring in the original)

It is an elementary rule in interpreting contracts that clauses of a contract should be read together to determine the proper context and meaning of the disputed clauses. The Court cannot simply ignore one clause without violating the true intent of the parties. Therefore, UCPB correctly charged to EGI the taxes, charges, fees, costs, and expenses it incurred in implementing the transfer of the listed properties through the existing security arrangements of the parties.

¹¹⁴ *Rollo*, p. 279.

¹¹⁵ *Id.* at 276.

The CA erred in relying on Section 3.1 of the MOA in ruling that transaction costs incurred in relation to the *dacion en pago* contracts should be charged to UCPB. Noticeably, the MOA and the Amendment only govern the transfer of the properties listed therein. The terms of the MOA and the Amendment should not be made to apply to the *dacion en pago* contracts covering additional properties not included in the MOA and the Amendment.

It is true that the uniformly worded *dacion en pago* contracts, states that:

Section 4.04. **All taxes, charges, fees and expenses arising from the execution, delivery and performance of this Agreement shall be for the account of the Vendor and paid in full as and when such taxes, charges, fees and expenses fall due.**¹¹⁶ (Emphasis and underscoring supplied)

Nonetheless, EGI should not be charged for the taxes, charges, fees and expenses for the transfer of the additional properties covered by the *dacion en pago* contracts. As have been already discussed, UCPB's request for additional properties to cover the remaining properties not transferred pursuant to the MOA was grossly disproportionate to EGI's remaining obligation of ₱11,347,770.50. As it was unnecessary for UCPB to obtain 107 more assets valued at ₱166,127,368.50 to satisfy an obligation of ₱11,347,770.50, the bank should bear the costs incurred for the transfer of the properties covered by the *dacion en pago* contracts.

Included in the expenses chargeable to the account of EGI are the expenses incurred in the extrajudicial foreclosure of the listed assets under the MOA through a notary public, which include, *inter alia*, notarial commission, registration fee of certificate of sale, and posting and publication expenses. The Court finds the computation of these items to be supported with documentary evidence and the value of notarial commission was arrived at in accordance with prevailing rules at the time of the transfer.¹¹⁷ Following paragraph (e), Section 20 Amendments to Rule 141 (Legal Fees) of the Rules of Court, A.M. No. 00-2-01-SC, the notarial commission is computed as shown below:

¹¹⁶ Records, pp. 93, 102, 110, 118, 126, 134, 142, 152, 161, 169, 184, 192, 200, 216, 224, 232, 240, 248, 256, 264, 272, 280, 287.

¹¹⁷ Paragraph (e), Section 20 Amendments to Rule 141 (Legal Fees) of the Rules of Court, A.M. No. 00-2-01-SC states:

x x x x

Section 20. *Other Fees.* – The following fees shall also be collected by the clerks of Regional Trial Courts or courts of the first level, as the case may be:

x x x x

(e) For applications for and certificates of sale in notarial foreclosures:

1. On the first four thousand (P4,000) pesos, five (5%) per cent;
2. On all sums in excess of four thousand (P4,000) pesos, two and one-half (2.5%) percent.

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Table C	
Bid price	Php 723,592,000.00
Less: first four thousand	(4,000)
	Php 723,588,000.00
x 2.5%	0.025
	Php 18,089,700.00
Add: 5% of first four thousand	200
Notarial Commission	Php 18,089,900.00

Likewise, the taxes to be shouldered by EGI, the documentary stamp tax (1.5% of Consideration or Fair Market Value, whichever is higher) and the creditable withholding tax (which represents the percentage tax of 5% of the total consideration),¹¹⁸ were computed in conformity with the Tax Code and prevailing revenue regulation at the time of transfer. Since the assets transferred to UCPB are in the nature of ordinary assets of EGI, a real estate developer, and are not held as capital assets, the creditable withholding tax is 5% of the gross selling price or total amount of consideration or its equivalent paid for the transfer. These expenses should be deducted from the excess payment computed in Table B as shown below:

¹¹⁸ Paragraph (J), Section 2.57.2 of Revenue Regulations No. 02-98 states:
Section 2.57.2. *Income Payment Subject to Creditable Withholding Tax and Rates Prescribed Thereon.* – Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:

x x x x

(J) *Gross selling price or total amount of consideration or its equivalent paid to the seller/owner for the sale, exchange or transfer of* — Real property, other than capital assets, sold by an individual, corporation, estate, trust, trust fund or pension fund and the seller/transferor is habitually engaged in the real estate business in accordance with the following schedule –

Those which are exempt from a withholding tax at source as prescribed in Sec. 2.57.5 of these regulations	Exempt
With a selling price of five hundred thousand pesos (P500,000.00) or less	1.5%
With a selling price of more than five hundred thousand pesos (P500,000.00) but not more than two million pesos (P2,000,000.00)	3.0%
With selling price of more than two million pesos (P2,000,000.00)	5.0%

A seller/transferor must show proof of registration with HLURB or HUDCC to be considered as habitually engaged in the real estate business.

Real property, other than capital asset, by an individual, estate, trust, trust fund or pension fund or by a corporation who is not habitually engaged in the real estate business – Seven and one-half percent (7.5%).

Gross selling price shall mean the consideration stated in the sales document or the fair market value determined in accordance with Section 6 (E) of the Code, as amended, whichever is higher. In an exchange, the fair market value of the property received in exchange, as determined in the Income Tax Regulations shall be used.

Where the consideration or part thereof is payable on installment, no withholding of tax is required to be made on the periodic installment payments where the buyer is an individual not engaged in trade or business. In such a case, the applicable rate of tax based on the entire consideration shall be withheld on the last installment or installments to be paid to the seller.

However, if the buyer is engaged in trade or business, whether a corporation or otherwise, the tax shall be deducted and withheld by the buyer on every installment. (Emphasis supplied)

Table D		
EGI's excess payment¹¹⁹		154,779,598.00
LESS:	Transaction cost to be shouldered by EGI for implementing the MOA and the Amendment	
	Filing Fee for foreclosure of real estate mortgage	4,595,028.00
	Sheriff's posting on foreclosure of real estate mortgage	48.00
	(Additional) Sheriff's posting on foreclosure of real estate mortgage	2.00
	Legal Research Fund	45,950.28
	Notarial Commission ¹²⁰	18,089,900.00
	Registration Fee of Certificate of Sale	1,631,590.00
	Publication of Legal Notice of Foreclosure	673,920.00
	Documentary Stamp Tax	10,853,880.00
	Creditable Withholding Tax ¹²¹	36,179,600.00
	Docket Fee	452.00
	Deposit for Costs and Sheriff's Fee	700.00
	Legal Research Fund	20.00
	Docket Fee and Clerk's Commission	50.00
	Judiciary Development Fund	300.00
EGI's excess payment after deduction of transaction cost		72,071,440.28
		Php 82,708,157.72

After deducting the transaction costs from the excess payment of EGI previously computed in Table B, there remains a balance of ₱82,708,157.72.

EGI is not entitled to the depreciated value of furniture, fixtures, equipment, and other movable properties in units acquired through the MOA and the dacion en pago contracts.

The furniture, fixtures, equipment, and other movable properties found in units UCPB acquired through the MOA and *dacion en pago* contracts belong to UCPB.

UCPB argued that in a Letter¹²² dated December 31, 1999 sent by EGI to the bank, the parties allegedly intended to necessarily and simultaneously include in the transfer of ownership of the properties in favor of the bank the movable properties found therein.¹²³ After a painstaking review of the voluminous records of the case, the Court finds that the CA erred in ruling

¹¹⁹ See Table B.

¹²⁰ Supra at note 117.

¹²¹ Supra at note 118.

¹²² *Rollo*, pp. 485-487.

¹²³ *Id.* at 44-46.

that EGI is entitled to the depreciation value of the furniture, fixtures, equipment, and other movable properties found in the assets acquired through *dacion en pago*. This was confirmed in the Letter executed by the representatives of EGI, Eulalio Ganzon, and Gonzalez, the pertinent portion of which states:

We refer to the Memorandum of Agreement, dated December 31, 1999, we have executed. Terms defined under the Agreement and used herein shall have the meanings ascribed to them under the Agreement.

We refer, more particularly, to the provisions obtained in Section 3.0 and 4.0 of the Agreement and, in connection with such Sections, we would like to confirm our mutual understanding relating to: (i) the manner of transfer of title to the Bank of the Property and (ii) the valuation assigned to the Property, subject of such transfer and conveyance to the Bank as set forth below.

A. MANNER OF TRANSFER OF TITLE

1. **Foreclosure Proceedings** – Unless otherwise revised, amended or superseded by EGI and the Bank, the following assets comprising the Property shall be subject of foreclosure proceedings instituted by the Bank conformably with the sequence set forth herein:

- (i) the Condominium Assets, *inclusive of the fixtures, facilities, improvements and other personal assets situated therein;*
- (ii) the additional areas of the EGI-Rufino Building, wherein the Condominium Assets are located, which shall be covered by new muniments of title secured by EGI, more particularly identified in the schedule attached hereto and made an integral part hereof as Schedule “A”, subject to further revisions to incorporate such other areas identified by EGI and accountable to the Bank;
- (iii) other assets comprising the Property specified in Annex “A” of the Agreement, other than those referred to in (i) and (ii) above; and
- (iv) other assets not included in Annex “A” of the Agreement and the provisions of this Letter-Undertaking presented by EGI and acceptable to the Bank, if any.

We agree that the Bank shall have the right to determine the nature and extent of the assets comprising the Property that shall be included in the foreclosure proceedings referred to in this paragraph.¹²⁴ (Emphasis and underscoring in the original; italics supplied)

The quoted portion of the Letter prepared by officials of EGI is a recognition by the company of the intention of the parties to include the

¹²⁴ Id. at 485-486.

movable properties found in the condominium units transferred in favor of UCPB. By stating in its own Letter that the "Condominium Assets, *inclusive of the fixtures, facilities, improvements and other personal assets situated therein,*" will be subjected to foreclosure proceedings, EGI is now estopped from claiming that the foreclosure of the condominium units in EGI Rufino Plaza did not cover the movable properties found therein.

Even the terms of the MOA impliedly acknowledged the underlying desire to turnover the condominium units and the movable properties found therein. Sections 2.3 and 2.5 of the MOA state:

Section 2.3. **Exercise of Proprietary Rights** – Conformably with the mutual understanding of the parties, and subject to the provisions of Section 2.5 below, *EGI hereby grants and vests in favor of the BANK, simultaneously with the execution of this Agreement, exclusive proprietary rights inherent in the Property, to the extent allowed under applicable laws. Without, in any manner, limiting the generality of such right, the BANK shall, at its discretion, enjoy and exercise the following rights relating to the Property, namely:*

- (a) directly or indirectly, the use, possession and enjoyment of the Property;
- (b) the receipt of all material gain or benefit arising out of or resulting from such use, possession and enjoyment; and
- (c) the disposition of the Property in such manner reasonably determined by the BANK to the extent provided under applicable laws.

EGI shall, as the holder of naked title to the Property, jointly with the BANK, perform the appropriate acts necessary or required for the preservation and maintenance of the Property.

Section 2.5. **Residual Rights** – Unless otherwise revised, amended or superseded by the parties, it is understood and agreed that EGI shall continue the business operations EGI is presently conducting with the use of the Condominium Assets for the purpose of closing and winding-up its books of account until March 31, 2000. Any benefits or gains resulting from such operations during the period specified herein shall accrue in favor of EGI. *Commencing on April 1, 2000, the BANK shall assume such operations, and receive the benefits therefrom,* and EGI represents and warrants that it shall hold the BANK free and harmless from any claim, loss, liability or damage instituted, suffered or incurred by third parties, resulting from the operations of EGI or the use of the Condominium Assets, prior to April 1, 2000.¹²⁵ (Emphasis and underscoring in the original; italics supplied)

It is clear from the foregoing that EGI intends to immediately turnover operations in the assets to be transferred after March 31, 2000 so that UCPB may assume operations and receive benefits from the hotel and commercial leasing business of EGI. The bank will be prevented from immediately assuming operations and be deprived of the benefits therefrom if the movable properties will not be included in the assets to be transferred. It must be highlighted that the movable properties being disputed include *inter alia* beds, lamps, tables, chairs, and electrical equipment that are essential to the hotel and commercial leasing business that the bank will take over from EGI. The bank accepted the condominium units with the movable properties found therein with the intention of assuming the hotel and commercial leasing business of EGI to generate profit and recoup the money it loaned to EGI.

EGI is not entitled to be credited for the value of the 28 units at EGI Rufino Plaza in UCPB's possession to its loan obligation.

The remaining 28 units at EGI Rufino Plaza comprises of "16 common areas, more specifically the lobbies on 8 floors in front of the elevators, and 12 valet parking areas in the EGI Rufino Plaza."¹²⁶ UCPB admitted that it is holding the certificates of title over these areas for safekeeping and that these were not yet conveyed in favor of the bank as the parties have not yet agreed on their valuation.¹²⁷ In UCPB's answer, it argued that common areas belong to all unit owners in the building, including the bank, and thus cannot be appropriated by EGI for itself although it had secured titles under its name.¹²⁸ The contention of UCPB is meritorious.

Common areas refer to "the entire [condominium] project excepting all units separately granted or held or reserved."¹²⁹ Section 2 of Republic Act (R.A.) No. 4726 states that:

Title to the common areas, including the land, or the appurtenant interests in such areas, may be held by a corporation specially formed for the purpose (hereinafter known as the "condominium corporation") in which the holders of separate interest shall automatically be members or shareholders, to the exclusion of others, in proportion to the appurtenant interest of their respective units in the common areas.¹³⁰

Section 6(a) of R.A. No. 4726 impliedly enumerated what the law considers as common areas by enumerating what are not part of a

¹²⁶ Id. at 387.

¹²⁷ Id.

¹²⁸ Id. at 399.

¹²⁹ Section 3 (d), The Condominium Act, Republic Act No. 4726.

¹³⁰ Section 2, The Condominium Act, Republic Act No. 4726.

condominium unit. The common areas not part of a condominium unit include:

x x x [B]earing walls, columns, floors, roofs, foundations and other common structural elements of the building; **lobbies, stairways, hallways, and other areas of common use**, elevator equipment and shafts, central heating, central refrigeration and central air-conditioning equipment, reservoirs, tanks, pumps and other central services and facilities, pipes, ducts, flues, chutes, conduits, wires and other utility installations, wherever located, except the outlets thereof when located within the unit. (Emphases supplied)

Here, the 28 areas in dispute are considered common areas by the Condominium Act. The law explicitly identified lobbies as common areas while the valet parking slots, which are not offered for sale to unit owners in EGI Rufino Plaza, may also be inferred as common areas due to their purpose and use.

Having established the nature of the areas in dispute, the Court shall now discuss the context of EGI's ownership over these areas in relation to the provisions of the Condominium Act. In this regard, it is worthy to highlight salient provisions of the law, Sections 6(c) and 7, which state:

Section 6. Unless otherwise expressly provided in the enabling or master deed or the declaration of restrictions, the incidents of a condominium grant are as follows:

x x x x

(c) Unless otherwise, provided, **the common areas are held in common by the holders of units, in equal shares, one for each unit.**

x x x x

Section 7. Except as provided in the following section, **the common areas shall remain undivided**, and there shall be no judicial partition thereof. (Emphases supplied)

Based on the foregoing, the developer cannot transfer or convey the ownership of the common areas as these are held in common by the unit owners. This rule applies even if the developer is the registered owner of the common areas. As a rule, the common areas shall remain undivided and that judicial partition shall only be permitted upon compliance with the conditions enumerated in Section 8¹³¹ which governs the judicial partition of

¹³¹ Section 8 of R.A. No. 4726 states:

Section 8. Where several persons own condominiums in a condominium project, an action may be brought by one or more such persons for partition thereof by sale of the entire project, as if the owners of all of the condominiums in such project were co-owners

the common areas. Thus, EGI cannot transfer the 28 common areas for value to the prejudice of the unit owners.

Though the corresponding certificates of title to these areas were not included in the assets enumerated in the MOA, the apparent intention of the parties to transfer these areas to a condominium corporation is reflected in the following relevant provisions of the MOA:

Section 4.1. **The Condominium Assets** – In consonance with the commitments and obligations of EGI under this Agreement, *EGI covenants and agrees that it shall, within ninety (90) days from the date of execution of this Agreement, cause the performance of such acts and deeds necessary and required for:*

*the organization and establishment of the condominium corporation which shall hold the title to the real property covered by Transfer Certificates of Title Nos. 16856, 16857, 16858 and 16859 registered in the name of Rufson Enterprises, Inc., copies of which are attached hereto and made integral parts hereof as Annexes “C”, “C-1”, “C-2” and “C-3” (hereinafter collectively referred to as the “Land”) and **the common areas of the building** constructed on the Land wherein the Condominium Assets are located, conformably with the relevant provisions of the JVAgreements[.]¹³² (Emphases and underscoring in the original, italics supplied)*

It is clear from the quoted provision that the common areas of the building are meant to be held by a condominium corporation that EGI committed to organize and establish. This construction is consistent Section 2 of R.A. No. 4726, the provision in the Condominium Act that recognizes the necessity of the creation of condominium corporations to hold the title to the common areas, including the land, or the appurtenant interests in such areas.

of the entire project in the same proportion as their interests in the common areas: *Provided, however,* That a partition shall be made only upon a showing:

(a) That three years after damage or destruction to the project which renders material part thereof unit for its use prior thereto, the project has not been rebuilt or repaired substantially to its state prior to its damage or destruction, or

(b) That damage or destruction to the project has rendered one-half or more of the units therein untenable and that condominium owners holding in aggregate more than thirty percent interest in the common areas are opposed to repair or restoration of the project; or

(c) That the project has been in existence in excess of fifty years, that it is obsolete and uneconomic, and that condominium owners holding in aggregate more than fifty percent interest in the common areas are opposed to repair or restoration or remodelling or modernizing of the project; or

(d) That the project or a material part thereof has been condemned or expropriated and that the project is no longer viable, or that the condominium owners holding in aggregate more than seventy percent interest in the common areas are opposed to continuation of the condominium regime after expropriation or condemnation of a material portion thereof; or

(e) That the conditions for such partition by sale set forth in the declaration of restrictions, duly registered in accordance with the terms of this Act, have been met.

Furthermore, Section 6(d) of R.A. No. 4726 acknowledges the existence of a “non-exclusive easement for ingress, [and] egress,” which means that unit owners may freely use the common areas for entrance or exit. To permit the developer to appropriate for itself, and later on dispose the common areas as it pleases, will leave unit owners in a precarious and helpless situation wherein they may be prevented from enjoying the use of their property. It would be impossible for UCPB to use the condominium assets transferred in its favor without passing through “the lobbies on eight (8) floors in front of the elevators, and 12 valet parking areas in the EGI-Rufino Plaza.” This would be repugnant to the objective of the Condominium Act of safeguarding the common interest, safety, and the harmonious living conditions of the occupants.¹³³ After all, the creation of a condominium corporation is intended:

To enable the orderly administration over these common areas which are jointly owned by the various unit owners, the Condominium Act permits the creation of a condominium corporation, which is specially formed for the purpose of holding title to the common area, in which the holders of separate interests shall automatically be members or shareholders, to the exclusion of others, in proportion to the appurtenant interest of their respective units.¹³⁴

The objective of the parties in executing the MOA, the Amendment, and the *dacion en pago* contracts would be defeated should the certificates of title to the common areas held by the bank for safekeeping be returned to EGI and if the developer will be permitted to appropriate for itself and transfer for value the common areas. Delivery of the certificates of title will result in the return of the possession over these areas to EGI, the obstruction of ingress and egress essential to occupants of EGI Rufino Plaza, and the violation of the express terms of the MOA and the provisions of the Condominium Act. Accordingly, the CA erred in ordering UCPB to pay EGI the value of the 28 additional units, which both parties recognize as common areas, in the amount of ₱87,578,846.60.

Moreover, it must be pointed out that the mortgage of a portion of the common areas of a condominium project without the approval of the Housing and Land Use Regulatory Board (HLURB) is prohibited.¹³⁵ Section 18 of Presidential Decree No. 957¹³⁶ provides:

Section 18. *Mortgages.* – No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority. Such approval shall not be granted unless it is shown that the proceeds of the

¹³³ See *Limson v. Wack Wack Condominium Corporation*, 658 Phil. 124 (2011).

¹³⁴ *Yamane v. BA Lepanto Condominium Corp.*, 510 Phil. 750, 772-773 (2005).

¹³⁵ *Concorde Condominium, Inc. v. Philippine National Bank*, G.R. Nos. 228354 & 228359, November 26, 2018.

¹³⁶ Subdivision and Condominium Buyers' Protection Decree, Presidential Decree No. 957, July 12, 1976.

mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereof.

Here, similar to a mortgage, EGI meant to settle its indebtedness with UCPB by offering the common areas as security for its outstanding obligation. This supposed arrangement was not established to have been made with the consent and authority of the HLURB.

As a final point on this matter, the Court clarifies that the creation of a condominium corporation is an obligation of the developer EGI under Section 2 of R.A. No. 4726 and under the express terms of the MOA. As articulated in Section 2 of R.A. No. 4726, the creation of a condominium corporation is intended to ensure the harmonious living of the unit owners and the orderly administration of the common areas in which the unit owners have an interest. It is also explicitly provided in the MOA that EGI committed to "cause the performance of such acts and deeds necessary and required for x x x the organization and establishment of the condominium corporation which shall hold the title to x x x the common areas of the building."¹³⁷ Thus, the Court finds it necessary to instruct EGI to fulfill its obligation and carry out such acts and deeds needed for the creation of a condominium corporation. Pursuant to Section 10 of R.A. No. 4726, as amended, such corporation shall constitute the management body of the project. Since UCPB owns a substantial portion of EGI Rufino Plaza, the bank or its assignee must participate in the formation of the condominium corporation.

Moral Damages

As a rule, moral damages cannot be awarded in favor of juridical entities. In *Noell Whessoe, Inc. v. Independent Testing Consultants, Inc.*,¹³⁸ the Court explained that:

A corporation is not a natural person. It is a creation of legal fiction and "has no feelings[,] no emotions, no senses[.]" A corporation is incapable of fright, anxiety, shock, humiliation, and physical or mental suffering. "Mental suffering can be experienced only by one having a nervous system and it flows from real ills, sorrows, and griefs of life[.]" **A corporation, not having a nervous**

¹³⁷ Records, p. 277.

¹³⁸ G.R. No. 199851, November 7, 2018.



system or a human body, does not experience physical suffering, mental anguish, embarrassment, or wounded feelings. Thus, a corporation cannot be awarded moral damages.¹³⁹ (Citations omitted; emphasis supplied)

However, where besmirched reputation is alleged, moral damages may be awarded. In *Crystal v. Bank of the Philippine Islands*,¹⁴⁰ the Court clarified that:

x x x [W]hile the Court may allow the grant of moral damages to corporations, it is not automatically granted; there must still be proof of the existence of the factual basis of the damage and its causal relation to the defendant's acts. This is so because moral damages, though incapable of pecuniary estimation, are in the category of an award designed to compensate the claimant for *actual injury* suffered and not to impose a penalty on the wrongdoer.¹⁴¹ (Emphasis in the original)

Therefore, to be entitled to moral damages, EGI must prove the existence of the factual basis of the damage and its causal relation to UCPB's acts.

In *Caritas Health Shield, Inc. v. MRL Cybertech Corp.*,¹⁴² the Court highlighted the absence of the causal link between Caritas' breach and MRL's *alleged* besmirched reputation, and the lack of discussion on these points by the lower courts in ruling that that award of moral damages had no factual or legal basis. Similarly, in the present case, though EGI alleged in its pleadings its claim for moral damages on the ground of besmirched reputation, it failed to demonstrate, much less prove, how UCPB's conduct caused the real estate developer social humiliation. Other than EGI's self-serving statements, it failed to show how its reputation was tarnished by the dispute. It is not sufficient for the CA to simply conclude that "by reason of UCPB's oppressive and malevolent acts and excesses, plaintiff-appellee EGI was compelled to litigate in order to protect its interests and good standing in the community"¹⁴³ to justify the award of moral damages. The lack of causal link between the conduct of the bank and the alleged besmirched reputation of EGI compels the Court to rule that there is no factual nor legal basis to award moral damages.

Furthermore, the banking industry is impressed with public interest. In *Banco de Oro-EPCI, Inc. v. JAPRL Development Corporation*,¹⁴⁴ the Court explained:

¹³⁹ Id.
¹⁴⁰ 593 Phil. 344 (2008).
¹⁴¹ Id. at 355.
¹⁴² G.R. Nos. 221651 & 221691 (Notice), July 11, 2016.
¹⁴³ *Rollo*, p. 89.
¹⁴⁴ 574 Phil. 495 (2008).



Banks are entities engaged in the lending of funds obtained through deposits from the public. They borrow the public's excess money (*i.e.*, deposits) and lend out the same. Banks therefore redistribute wealth in the economy by channeling idle savings to profitable investments.

Banks operate (and earn income) by extending credit facilities financed primarily by deposits from the public. They plough back the bulk of said deposits into the economy in the form of loans. Since banks deal with the public's money, their viability depends largely on their ability to return those deposits on demand. For this reason, banking is undeniably imbued with public interest. Consequently, much importance is given to sound lending practices and good corporate governance.

Protecting the integrity of the banking system has become, by large, the responsibility of banks. The role of the public, particularly individual borrowers, has not been emphasized. Nevertheless, we are not unaware of the rampant and unscrupulous practice of obtaining loans without intending to pay the same.¹⁴⁵ (Citations omitted)

Utmost diligence is expected in banks in handling money entrusted to them by their clients. In this case, UCPB acted reasonably in exerting efforts, including agreeing to the MOA and the Amendment, and in facilitating the transfer of EGI's properties in its name to recover a significant amount of money EGI borrowed. No bad faith can be imputed from the bank in exerting earnest efforts to collect from its defaulting debtor. Hence, the award of moral damages in the amount of ₱30,000,000.00 is erroneous.

Temperate Damages

Temperate damages refer to those that may be recovered "when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty."¹⁴⁶ The assessment of temperate damages is left to the discretion of the court, in accordance with the circumstances of each case¹⁴⁷ and it must be reasonable.¹⁴⁸

The Court deems it proper to award temperate damages due to the fact that EGI had suffered some pecuniary loss though the amount of which cannot be proven with certainty. EGI is entitled to temperate damages for the opportunity or rent it lost on the additional assets that UCPB requested from EGI. It must also be highlighted that EGI was compelled to utilize its resources to defend its assertion that it had overpaid the bank and, in the process, incurred expenses. Thus, EGI is entitled to reasonable temperate damages in the amount of ₱1,000,000.00.

¹⁴⁵ Id. at 507.

¹⁴⁶ CIVIL CODE OF THE PHILIPPINES, Article 2224.

¹⁴⁷ CIVIL CODE OF THE PHILIPPINES, Article 2216.

¹⁴⁸ CIVIL CODE OF THE PHILIPPINES, Article 2225.



Exemplary Damages

Article 2232 of the Civil Code provides that in a contractual or quasi-contractual relationship, exemplary damages may be awarded only if the defendant had acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.¹⁴⁹ Article 2234 of the Civil Code further requires that, to be entitled to exemplary damages, the claimant must show that he is entitled to moral, temperate, or compensatory damages.¹⁵⁰

In this case, since the Court found the award of temperate damages proper, EGI should also be awarded exemplary damages. However, the ₱10,000,000.00 should be reduced to a more reasonable amount of ₱1,000,000.00.

Attorney's Fees

The instances when attorney's fees may be awarded are enumerated in Article 2208 of the Civil Code which reads:

Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

x x x x

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

x x x x

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.¹⁵¹

In this case, the Court finds the award of ₱2,000,000.00 in attorney's fees in favor of EGI to be reasonable.

Legal Interest

The award of interest must be modified in accordance with the Court's ruling in the case of *Nacar v. Gallery Frames*¹⁵² In *Nacar*, the

¹⁴⁹ CIVIL CODE OF THE PHILIPPINES, Article 2232.

¹⁵⁰ CIVIL CODE OF THE PHILIPPINES, Article 2234.

¹⁵¹ CIVIL CODE OF THE PHILIPPINES, Article 2208.

¹⁵² 716 Phil. 267 (2013).

Court, modified the impossible interest rates on the basis of BSP Monetary Board Circular No. 799, which took effect on July 1, 2013, thus:

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be **6% per annum** to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be **6% per annum** from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

And in addition to the above, judgments that have become final and executory prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein.¹⁵³ (Emphasis and italics in the original; Citation omitted)

When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount awarded may be imposed at the discretion of the court at the rate of 6% *per annum*. The excess payment made by EGI is similar to the quasi-contract of *solution indebiti* under

¹⁵³

Id.

Article 2154¹⁵⁴ of the Civil Code and cannot be considered a loan or forbearance of money. Thus, the obligation to refund the excess payment made by EGI is governed by Article 2209¹⁵⁵ of the Civil Code which imposes an interest of six percent (6%) *per annum*.

The reckoning point for the interest, when imposed on unliquidated claims or damages, such as temperate and exemplary damages, is set on the date of the judgment of the court granting the award since it is only at such time when the amount claimed becomes “liquidated,” that is, determined with reasonable certainty. Thus, the foregoing monetary award shall earn 6% interest *per annum* computed from the date of the Decision dated June 28, 2016 of the RTC until finality of judgment.

Thereafter, the foregoing monetary award, plus attorney’s fees, shall begin to earn legal interest at 6% *per annum* from the finality of this Decision until full payment because during the interim period, the total monetary award is considered equivalent to a forbearance of credit.

Meadow Brook’s Petition for Intervention

Lastly, the Court cannot take cognizance of the petition for intervention Meadow Brook filed. As provided in Section 2, Rule 19 of the Rules:

Section 2. Time to intervene. – The motion to intervene may be filed **at any time before rendition of judgment by the trial court.** A copy of the pleading-in-intervention shall be attached to the motion and served on the original parties.

At the time the intervention was filed, the petition for review on *certiorari* had already been filed before this Court. Furthermore, the intervention of Meadow Brook involves facts that occurred after EGI instituted the original complaint. In fact, Meadow Brook’s intervention is anchored on a Contract to Sell executed on August 3, 2018, long after the original complaint was filed.

WHEREFORE, the Decision dated September 26, 2018 and the Resolution dated January 10, 2019 of the Court of Appeals in CA-G.R. CV No. 108833 are **MODIFIED**. Petitioner United Coconut Planters Bank is **ORDERED** to pay respondent E. Ganzon, Inc. the following:

¹⁵⁴ Article 2154 of the Civil Code states:

Article 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

¹⁵⁵ Article 2209 of the Civil Code states:

Article 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six per cent per annum.

- (a) ₱82,708,157.72 representing the balance of the excess payment it made to Petitioner United Coconut Planters Bank after deducting transaction costs;
- (b) ₱1,000,000.00 as temperate damages;
- (c) ₱1,000,000.00 as exemplary damages;
- (d) Interest on the total monetary award in (a), (b), and (c) at the rate of six percent (6%) *per annum* reckoned from June 28, 2016 until finality of judgment;
- (e) ₱2,000,000.00 as attorney's fees; and
- (f) Costs of suit.

The total amount of the foregoing shall, in turn, earn interest at the rate of six percent (6%) *per annum* from finality of this Decision until full payment thereof in compliance with this Court's ruling in *Nacar v. Gallery Frames*.

Petitioner United Coconut Planters Bank is further **ORDERED** to execute release of mortgage over the rest of the properties of respondent E. Ganzon, Inc., which still carries the encumbrance, and physically deliver the respective certificates of title to the latter. If after the finality of this Decision petitioner United Coconut Planters Bank still fails to perform and comply with this directive, then the Register of Deeds of Pasay City shall enter, record, and annotate the release of the mortgage lien on the certificates of title concerned over the mortgaged assets of respondent E. Ganzon, Inc. not subjected to foreclosure nor assigned by way of *dacion en pago*.

Respondent E. Ganzon, Inc. is **ORDERED** to fulfill its contractual obligation pursuant to item (a), Section 4.1. of the Memorandum of Agreement and carry out such acts and deeds needed for the creation of a condominium corporation that shall constitute the management body of the condominium project within 90 days from the finality of this Decision. Since Petitioner United Coconut Planters Bank owns a substantial portion of respondent E. Ganzon, Inc. Rufino Plaza, the bank or its assignee must participate in the formation of the condominium corporation.

The petition for intervention of Meadow Brook Realty, Inc. is **DENIED**.

SO ORDERED.


ROSMARI D. CARANDANG
Associate Justice

WE CONCUR:



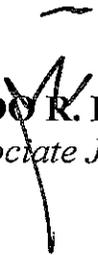
MARVIC MARIO VICTOR F. LEONEN
Associate Justice



RODIL V. ZALAMEDA
Associate Justice



SAMUEL H. GAERLAN
Associate Justice



RICARDO R. ROSARIO
Associate Justice

ATTESTATION

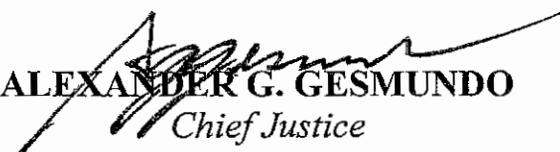
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



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