

**SPS. CAMILO Y. GO AND DELIA L. GO, PETITIONERS, VS. COURT OF APPEALS, HON. MARCELINO F. BAUTISTA, JR. AND MANUELA REALTY DEVELOPMENT CORP., RESPONDENTS.***G.R. No. 120040. January 29, 1996*

Ponente: FRANCISCO, J.

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In this petition for review on certiorari, petitioners spouses Camilo and Delia Go, through counsel, posed this query: "May respondent court be compelled by mandamus to grant the motion for summary judgment when there is no genuine issue as to a material fact raised in the opposition thereto?"[1] The antecedent facts are as follows:

To secure a loan of P93,200.00 with 14% interest p/a, petitioners on June 15, 1978, constituted a real estate mortgage over their house and lot covered by TCT No. 30532 of the Registry of Deeds of Pasay City in favor of herein private respondent Manuela Realty Development Corporation (Manuela). For alleged petitioners' failure to heed Manuela's repeated demands for payment of the loan, Manuela moved for the extrajudicial foreclosure of the subject properties pursuant to a provision in the deed of mortgage. The ex-officio sheriff of Makati City conducted a public auction sale on September 9, 1989, where Manuela submitted the lone and winning bid of P251,151.74, petitioners' alleged outstanding debt at the time. After the expiration of the redemption period, Manuela filed its affidavit of consolidation of ownership before the Register of Deeds. Thus, ownership of the mortgaged properties was consolidated in Manuela and a new Transfer Certificate of Title (TCT No. T-1884) was thereafter issued in its name.

Petitioners filed on August 21, 1989, and later amended on November 20, 1989, a complaint for recovery of ownership of the subject properties against Manuela before the Regional Trial Court of Makati City, Branch 136, docketed as Civil Case No. 89-4839. They alleged payment of five hundred dollars (\$500) to Manuela sometime in 1982 by money transfer order through Security Pacific National Bank, and payment of the entire loan as all their installment payments, if added, will amount to P95,946.67 which sum is more than their contracted loan. Petitioners also raised as an issue the alleged invalidity of the extra-judicial foreclosure of the subject properties and usury on the ground that the stipulated 14% interest p/a exceeds the 12% applicable interest ceiling. In its answer, Manuela countered that petitioners failed to pay their obligation and, in fact, argued that it was their continued default thereof which caused their outstanding debt to increase. Manuela maintained that the extra-judicial foreclosure sale in question was valid and the 14% stipulated interest was not usurious. Petitioners subsequently moved for summary judgment attaching their joint affidavit which Manuela opposed, albeit without attaching its own counter-affidavit. The trial court found that there are genuine issues of facts that need to be fully ventilated, thus the motion was denied. Petitioners elevated the case before public respondent Court of Appeals[2] by way of mandamus to compel the trial court to render summary judgment, but to no avail. Their motion for reconsideration was denied; hence, the instant petition posing the above query.

The petition lacks merit. Mandamus lies to compel the performance, when refused, of a ministerial duty, but not

to compel the performance of a discretionary duty. The propriety of rendering summary judgment under Rule 34 of the Rules of Court rests on the sound exercise of the Court's discretion. Petitioners failed to establish a mandatory and ministerial duty on the part of the trial court to render summary judgment. Likewise, they failed to show a clear legal right to the relief sought. Mandamus will not issue to enforce a right which is in substantial dispute or to which a substantial doubt exists. Litigants, like the herein petitioners, may not be permitted to impose upon the court their notions of how cases should be resolved. Neither may they be allowed to direct the exercise of judgment or discretion by the court in a particular way. The court has to decide a question or issue according to its own judgment or understanding of the law, as well as the law's applicability to the attendant facts and circumstances.

Moreover, even if we were to gloss over petitioners' erroneous recourse we find no reversible error in both the trial court's and respondent court's dispositions. Rule 34 of the Rules of Court authorizes the rendition of a summary judgment when on motion of the plaintiff, after the answer to the complaint had been filed, it would appear at the hearing for such a judgment, from the pleadings, depositions and admissions on file, together with the affidavits that, except as to the amount of damages, there is no genuine issue as to any material fact and that the winning party is entitled to a judgment as a matter of law.[3] Petitioners failed to show the absence of any genuine issue that could necessitate summary judgment. The Court of Appeals correctly ruled that the controlling factor in a motion for summary judgment is not the submission or non-submission of counter-affidavits, but the presence or absence of any genuine issue as to any material fact that would require the presentation of evidence. Where the facts pleaded by the parties are disputed or contested, proceedings for summary judgment can not take the place of trial.[4] We quote with approval, in this connection, respondent court's observation:

"x x x. Pleadings on hand show that private respondent duly raised substantial and triable issues of fact, to wit: that there was no overpayment of petitioners' loan; that petitioners' delinquency or breach in the settlement of their obligation, despite demands, caused private respondent to extrajudicially foreclose the mortgage.

"The respondent court correctly pointed out genuine triable issues of fact. Its assailed order reads, in part:

'a perusal of the pleadings will clearly show that there are genuine issues of facts that need to be fully ventilated. Samples are: how much was actually paid by the plaintiffs? Were the plaintiffs paying in accordance with the terms and conditions of the promissory note? What were the months where the plaintiffs defaulted? How much is the accumulated interests? And so on and so forth. There, (sic) aside from the legal issues, of course, e.g. the validity of the extrajudicial foreclosure sale.'

"Clearly, the aforesaid factual issues can be resolved only after trial on the merits, and not by a perfunctory resolution which, in effect, would deprive the litigant of his day in court. It is desirable that evidence pro and con, be presented by the parties, to show whose claim is valid, a process which is not long to conclude."[5]

Summary judgment can be resorted to only where there are no questions of fact in issue or where the material allegations of the pleadings are not disputed.[6] A party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, or that the issue posed in the complaint is so patently unsubstantial as not to constitute a genuine issue for trial, and any doubt as to the existence of such an issue is resolved against the movant,[7] as in this case.

WHEREFORE, the decision appealed from is hereby AFFIRMED.

### **SO ORDERED.**

Narvasa, C.J. (Chairman), Davide, Jr., Melo, and Panganiban, JJ., concur.

[1] Petition, p. 1; Rollo, p. 6.

- [2] Second Division, Purisima, J., Ponente; Isnani, Ibay-Somera, JJ., concurring.
- [3] Archipelago Builders v. Intermediate Appellate Court, 194 SCRA 207, 210 (1991).
- [4] Excelsa industries Inc. v. Court of Appeals, et al., G.R. No. 105455, August 23, 1995.
- [5] CA Decision, pp. 3-4; Rollo, pp. 82-83.
- [6] National irrigation Administration v. Gamit, 215 SCRA 436, 454 (1992).
- [7] Guevarra v. Court of Appeals, 124 SCRA 297, 314(1983).

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