

FAR EAST BANK AND TRUST COMPANY (FEBTC) AND/OR BANK OF THE PHILIPPINE ISLANDS, PETITIONERS, VS. SPOUSES ROMULO PLAZA AND WILMA PLAZA, RESPONDENTS.*G.R. No. 154489. July 25, 2003*

Ponente: BELLOSILLO, J.

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One Charlie Ang obtained from petitioners a loan of P2,158,000.00 using as collateral a piece of land owned by respondent-spouses; hence the mortgage to petitioners. Ang later obtained more loans from petitioners covered by promissory notes amounting to P4,800,000.00. When Ang failed to pay the loans upon maturity, petitioners started proceedings to foreclose the mortgage. Respondent-spouses offered to pay the mortgage indebtedness of P2,158,000.00 but petitioners refused to accept payment unless respondents assumed the other obligations of Ang with petitioners.

Respondents filed a civil action against petitioner banks and Charlie Ang for release of the real estate mortgage and damages with prayer for temporary restraining order and issuance of writ of injunction. Petitioners filed a motion to dismiss the complaint on the ground of lack of jurisdiction for non-payment of docket fees. Petitioners alleged that the action to enjoin foreclosure of mortgage was a real action and there was no showing that the docket fees were paid based on the assessed or estimated value of the real property involved. The Regional Trial Court of Cebu City denied the Motion to Dismiss as well as petitioners' Motion for Reconsideration. Petitioners filed a petition for certiorari before the Court of Appeals. The appellate court dismissed the petition and petitioners' motion for reconsideration. Petitioners then filed this petition for review.

On 3 March 2003, the trial court issued a writ of preliminary injunction enjoining petitioners from foreclosing the mortgage while the case before it was pending. The trial court also denied petitioners' motion for reconsideration of the 3 March 2003 Order.

In the meantime, the civil case before the trial court proceeded to the pre-trial stage where petitioners expressed their willingness to await any written offer to pay by respondents. Respondents sent a formal letter to petitioners offering to pay the amount of P2,158,000.00 and asking the release of the real estate mortgage. They enclosed a cashier's check in the amount of P2,158,000.00. Petitioners accepted the check only as partial payment without prejudice to the remaining balance of the loans. Respondents now insist that they have already paid the loans in full and that petitioners should release the mortgage in view of the payment.

Petitioners maintain that the civil action filed by respondents for the release of the mortgage is a real action, not a personal action of specific performance because it involves title to real property or any interest therein. It is allegedly a real action since the ultimate objective of the civil action involves recovery of ownership of the real property. Since it is a real action, petitioners assert that the trial court did not acquire jurisdiction over the case due to non-payment of the prescribed docket fees.

Respondents contend on the other hand that the civil case is a personal one as it involves a cancellation of real

estate mortgage, citing *Hernandez v. Rural Bank of Lucena*.^[1] Respondents' primary action is to compel acceptance of their payment of the mortgage debt and not necessarily to enjoin foreclosure. Petitioners already accepted the payment of P2,158,000.00 but the mortgage has not been released. Respondents' title to the property is not also in question and respondents are still in peaceful, actual and physical possession of the realty. Since title to property is not involved, it is a personal action.

The Court of Appeals did not commit any reversible error. The action filed by respondent-spouses before the RTC is a personal action. An action to compel the mortgagee to accept payment and for the consequent cancellation of a real estate mortgage is a personal action if the mortgagee has not foreclosed the mortgage and the mortgagor is in possession of the premises since neither the mortgagor's title to nor possession of the property is in question.^[2]

Contrary to petitioners' contention, respondents do not question the validity of the real estate mortgage they entered into. In fact they uphold its validity since they are willing to pay their obligation under the contract after which the contract should then be declared without legal effect. Also, there is as yet no transfer of title from respondents to petitioners. Respondents maintain that the title remains in their name and they are still in actual physical possession of the property. There is no foreclosure yet of the mortgage. Hence, there is no title to the land to be affected by the action.

There is also the issue of whether the real estate mortgage secured only the loan of P2,158,000.00 or it also secured the other loans subsequently obtained by Ang from petitioners. Petitioners argue that the mortgage is a continuing security for the loans obtained by Ang subsequent to the principal amount of P2,158,000.00. Respondents counter that they limited themselves to repay petitioners to the extent only of P2,158,000.00 and no more. Respondents admit in their Comment that this question could be properly ventilated in the trial court where the civil suit is pending, but since this is raised in connection with the petition at bar, they are willing to have the matter resolved now.

Considering that the civil suit is still before the trial court and conformably with its Order of 17 March 2003 where the issue is raised therein, it would not be proper to resolve it here. Any ruling thereon would be premature. Moreover, there may be evidence aside from the contract/mortgage deed that may be presented by the parties in the trial court to support their respective contentions.

WHEREFORE, there being no reversible error committed by the Court of Appeals, the petition is DENIED.

SO ORDERED.

Quisumbing, Austria-Martinez, Callejo, Sr. and Tinga, JJ., concur.

[1] No. L-29791, 10 January 1978, 81 SCRA 75.

[2] *Supra*; reiterated in *Carandang v. Court of Appeals*, No. L-44932, 15 April 1988, 160 SCRA 266, 271.

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