

DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS. SPOUSES JESUS AND ANACORITA DOYON, RESPONDENTS.

G.R. No. 167238. March 25, 2009

Ponente: CORONA, J.

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CORONA, J.:

This petition[1] seeks to set aside the November 23, 2004 decision[2] and February 18, 2005 resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 74660.

In the early 1990s, respondent spouses Jesus and Anacorita Doyon obtained several loans amounting to P10 million[4] from petitioner Development Bank of the Philippines (DBP). As security for the loans, respondents mortgaged their real estate properties as well as the motor vehicles of JD Bus Lines.

Due to their inability to fully pay their obligations upon maturity,[5] respondents requested petitioner to restructure their past due loans.[6] Petitioner agreed. Hence, respondents signed three promissory notes on June 29, 1994.[7]

Nonetheless, respondents still failed to pay the quarterly installments on the promissory notes. Thus, petitioner demanded the payment of the total value of their loans from respondents.[8] Respondents, however, ignored petitioner and adamantly refused to pay their loans.

Consequently, petitioner filed an application for extrajudicial foreclosure of real estate mortgages in the Regional Trial Court (RTC) of Ormoc City in 1995. To forestall the foreclosure proceedings, respondents immediately filed an action for their nullification in the RTC of Ormoc City, Branch 35 claiming that they had already paid the principal amount of their loans (or P10 million) to petitioner. This was docketed as Civil Case No. 3314-O.

For three years, Civil Case No. 3314-O was not acted upon by the RTC.

In 1998, petitioner withdrew the application for extrajudicial foreclosure and thereafter moved for the dismissal of Civil Case No. 3314-O. The RTC granted the motion in an order dated March 2, 1998.[9] It held:

In today's hearing, which is for the reception of evidence for [petitioner], [it] informed the Court about its withdrawal of the [application] for extrajudicial foreclosure of real estate made subject of the present case. In view of the withdrawal, [petitioner] moved for the dismissal of the case considering that the action would be rendered moot and academic.

When [respondents were] made to comment, they interposed no objection to the motion to dismiss.

By agreement therefore between the parties, this case is considered DISMISSED with prejudice.

Weeks later, petitioner demanded from respondents the payment of their outstanding obligations which had by then ballooned to more than P20 million. Again, respondents ignored petitioner.

Petitioner filed an application for extrajudicial foreclosure of respondents' real and chattel mortgages with the

DBP special sheriff in Makati[10] and subsequently took constructive possession of the foreclosed properties.[11] It posted guards at the perimeter of respondents' property in Barangay Cabulihan, Ormoc City (Cabulihan property) where the foreclosed motor vehicles of JD Bus Lines were parked.[12] Subsequently, the DBP special sheriff issued notices of sale at public auction of the foreclosed properties.[13]

Meanwhile, respondents filed a complaint for damages[14] against petitioner and the DBP special sheriff in the RTC of Ormoc City, Branch 35. According to respondents, by withdrawing the application for extrajudicial foreclosure and moving for the dismissal of Civil Case No. 3314-O, petitioner led them to believe that it would no longer seek the satisfaction of its claims. Petitioner therefore acted contrary to Article 19 of the Civil Code[15] when it foreclosed on the real and chattel mortgages anew.

Furthermore, respondents claimed that the provision in the mortgage contracts[16] allowing petitioner as mortgagee to take constructive possession of the mortgaged properties upon respondents' default was void. The provision allegedly constituted a pactum commissorium[17] since it permitted petitioner to appropriate the mortgaged properties.

Lastly, respondents assailed the validity of the public auctions conducted by the DBP special sheriff. The September 9, 1998 notices of sale stated that the foreclosed real properties would be sold at public auction on "September 16, 1998 at 10:00 a.m. or soon thereafter"[18] while the foreclosed motor vehicles would be sold on "September 16, 1998 at 2:00 p.m. or soon thereafter." [19] Section 4 of Act 3135,[20] however, requires that public auctions must take place from 9 a.m. until 4 p.m. or, allegedly, for seven continuous hours.

Petitioner, in its answer, pointed out that despite the restructuring, respondents refused to pay the amortizations on the June 29, 2004 promissory notes. Moreover, the filing of Civil Case No. 3314-O and the delay in its resolution prevented petitioner from collecting on the said notes from respondents. It withdrew the application in the RTC and moved for the dismissal of Civil Case No. 3314-O only for the purpose of availing of a more efficient legal remedy, that is, foreclosure through a special sheriff, as authorized by its charter.[21]

In a decision dated January 25, 2002,[22] the RTC found that, by withdrawing its application for extrajudicial foreclosure and moving for the dismissal of Civil Case No. 3314-O, petitioner led respondents to believe that their loans had been extinguished. Thus, petitioner acted in bad faith when it foreclosed on the real and chattel mortgages anew. The dispositive portion of the decision read:

Wherefore, after due consideration of all the foregoing, judgment is hereby rendered in favor of [respondents] and against [petitioner], ordering as follows:

- [petitioner] to immediately stop the presence of its security guards in the compound or premises of the plaintiffs at Barangay Cabulihan, Ormoc City, and to vacate them from said premises;
- [petitioner] to pay actual damages to [respondents] in the total amount of P16,000 per day for the four buses, or a total of P480,000 per month for these buses starting from April 27, 1998 until the time the buses shall have been allowed to leave the compound of [respondents] or until [petitioner] shall vacate the said premises, and P200,000 as compensatory damages for the injury to [respondents'] business standing;
- [petitioner] to pay P1,000,000 as exemplary damages;
- [petitioner and the DBP special sheriff] jointly and severally to pay the plaintiffs the sum of P2,000,000 as moral damages, the sum of P50,000 as attorney's fees, the sum of P10,000 as litigation expenses and costs of the suit.

Aggrieved, petitioner appealed to the CA. [23]

In a decision dated November 23, 2004, the CA affirmed the RTC decision with modification of the liability for damages. Because the DBP special sheriff merely performed his ministerial duty (when he foreclosed on the real and chattel mortgages and issued notices of sale in public auction of the foreclosed properties), petitioner alone was liable.

Petitioner moved for reconsideration but it was denied. Hence, this petition.

Petitioner basically asserts that it did not act in bad faith when it foreclosed on respondents' real and chattel mortgages anew. Because respondents' loans were past due, it had the right to satisfy its credit by foreclosing on the mortgages.

We grant the petition.

This Court is not a trier of facts and, as a rule, it only entertains questions of law in a petition for review on certiorari. This rule, however, admits of exceptions such as when the assailed decision is based on a misapprehension of facts.[24]

In this instance, the RTC and the CA both found that petitioner acted with bad faith when it foreclosed on the real and chattel mortgages. We disagree.

What is due to a person is determined by the circumstances of each particular case.[25] Article 19 of the Civil Code provides:

Article 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due and observe honesty and good faith.

For an action for damages under this provision to prosper, the complainant must prove that:

- (a) defendant has a legal right or duty;
- (b) he exercised his right or performed his duty with bad faith and
- (c) complainant was prejudiced or injured as a result of the said exercise or performance by defendant.

On the first requisite, we find that petitioner had the legal right to foreclose on the real and chattel mortgages.

Since respondents neither assailed the due execution of the June 29, 1994 promissory notes nor presented proof of payment thereof, their obligation remained outstanding. Upon default, by prior mutual agreement, petitioner had the right to foreclose on the real and chattel mortgages securing their loans.

The June 29, 1994 promissory notes uniformly stated that failure to pay an installment (or interest) on the due date was an event of default.[26] Respondents were therefore in default when they failed to pay the quarterly amortizations on the designated due dates.

When the principal obligation becomes due and the debtor fails to perform his obligation, the creditor may foreclose on the mortgage[27] for the purpose of alienating the (mortgaged) property to satisfy his credit.[28]

Regarding the second requisite, bad faith imports a dishonest purpose or some moral obliquity or conscious doing of a wrong that partakes of the nature of fraud.[29]

We note that the RTC of Ormoc City (Judge Fortunito L. Madrona) "sat" on Civil Case No. 3314-O for three long years. This inordinate delay prejudiced petitioner. Inasmuch as petitioner was in the business of lending out money it borrowed from the public, sound banking practice called for the exercise of a more efficient legal remedy against a defaulting debtor like respondent.[30] Thus, petitioner could not be faulted for resorting to

foreclosure through a special sheriff. Such procedure was, after all, the more efficient method of enforcing petitioner's rights as mortgagee under its charter.[31]

Moreover, the March 2, 1998 order of the RTC (quoted above) merely stated that the withdrawal of the application for extrajudicial foreclosure in the RTC rendered Civil Case No. 3314-O moot and academic. Nothing in the said order stated, or even hinted, that respondents' obligation to petitioner had in fact been extinguished. Thus, there was nothing on the part of petitioner even remotely showing that it led respondents to believe that it had waived its claims.

Lastly, inasmuch as petitioner demanded payment from them right after the dismissal of Civil Case No. 3314-O, respondents could not have reasonably presumed that the bank had waived its claims against them. Furthermore, the fact that a demand for payment was made negated bad faith on the part of petitioner. Despite giving respondents the opportunity to pay their long overdue obligations and avoid foreclosure, respondents still refused to pay. Since respondents did not have a cause of action against petitioner, the RTC and CA erred in granting damages to them.

A stipulation allowing the mortgagee to take actual or constructive possession of a mortgaged property upon foreclosure is valid. In *Agricultural and Industrial Bank v. Tambunting*,[32] we explained:

A stipulation ... authorizing the mortgagee, for the purpose stated therein specified, to take possession of the mortgaged premises upon the foreclosure of a mortgage is not repugnant [to either Article 2088 or Article 2137]. On the contrary, such a stipulation is in consonance or analogous to the provisions of Article [2132], et seq. of the Civil Code regarding antichresis and the provision of the Rules of Court regarding the appointment of a receiver as a convenient and feasible means of preserving and administering the property in litigation.[33]

The real estate and chattel mortgage contracts[34] uniformly provided that petitioner could take possession of the foreclosed properties upon the failure of respondents to pay even one amortization. Thus, respondents' refusal to pay their obligations gave rise to petitioner's right to take constructive possession of the foreclosed motor vehicles.

In *Philippine National Bank v. Cabatingan*,[35] we held that a sale at public auction held at any time between 9:00 a.m. and 4:00 p.m. of a particular day, regardless of duration, was valid. Since the sale at public auction of the foreclosed real properties and chattels was conducted between 10:00 a.m. and 11:00 a.m. and between 2:00 p.m. and 3:30 p.m., respectively, the auctions were valid.

WHEREFORE, the petition is hereby GRANTED. The November 23, 2004 decision and February 18, 2005 resolution of the Court of Appeals in CA-G.R. CV 74660 affirming the January 25, 2002 decision of the Regional Trial Court of Ormoc City, Branch 35 in Civil Case No. 3592-0 are SET ASIDE. New judgment is hereby entered dismissing Civil Case No. 3592-0 for lack of cause of action.

No pronouncement as to costs.

SO ORDERED.

Puno, C.J., (Chairperson), Ynares-Santiago[*], Carpio, and Leonardo-De Castro., JJ., concur.

[*] Per Special Order No. 588 dated March 16, 2009.

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Sesinando E. Villon

and Ramon M. Bato, Jr. of the (Former) Twentieth Division of the Court of Appeals. Rollo, pp. 22-41.

[3] Id., pp. 81-85.

[4] Respondents obtained the following loans from petitioner:

Under PN dated
September 11, 1990
P 900,000
January 14, 1991
5,400,000
April 14, 1992
980,000
April 14, 1992
2,720,000
TOTAL
P10,000,000
=====

Only the September 11, 1990 promissory note (PN) was presented in evidence. It was stated therein that respondents shall pay interest of 23.5% p.a. on the loan.

[5] Respondents were only able to make the following payments:

Under PN dated
September 11, 1990
P 1,095,183.06
January 14, 1991
4,282,605.57
April 14, 1992
1,000,000.00
April 14, 1992
1,789,731.91
TOTAL
P10,869,010.15
=====

[6] Under the PNs, a loan is considered past due if the debtor fails to give his installment payment on the designated due date.

[7] Respondents' loans were restructured as follow:

PN No.

94-40

June 29, 1994

I= 16%

P1,350,000

94-41

June 29, 1994

I= 21%

6,591,000

94-42

June 29, 1994

I= 21%

430,000

TOTAL

P8,371,000

=====

Each of the promissory notes uniformly stated:

[Amount] (Term: 4 years, to start on March 15, 1994)

x x x x x x x x x

[Respondents] hereby bind [themselves] to make partial payment as follows:

Principal payable in 16 equal quarterly installments of [amount] to start on June 15, 1994. Interest shall be payable quarterly together with principal due.

x x x x x x x x x

- There shall be no grace period upon failure to pay amortization on due date. After due date, in addition to the regular interest on outstanding principal, a default charge on the past due principal and interest rate at a rate of 24% per annum shall be charged [respondents].

- Bank advances for insurance premiums, taxes, litigation and other out of pocket expenses not covered by inspection and processing fees shall automatically be subject to one-time 2% service charge and default charge at the same rate as in (a) above, reckoned from the date advances were made.

[8] The June 29, 2004 promissory notes contained the following provision:

Upon the happening of any of the following (herein after referred to as "events of default"), the whole sum remaining unpaid, under this NOTE shall thereupon become immediately due and payable without demand and

notice:

- a) failure to pay any installment or interest on the date thereof;
- b) attachment or garnishment of any property, death, dissolution, receivership, insolvency, suspension of payments, reorganization or similar proceedings, or suspension of usual payment;
- c) any of the cases mentioned in Art. 1198 of the Civil Code and Sec. 76 and 77 of the General Banking Act;
- d) default in the payment of any other present or future loss or other obligation for borrowed money or any obligation guaranteed by them;
- e) any act or event which, in [petitioner's] opinion results in the impairment of the financial responsibility of any of them. (emphasis supplied)

[9] Order issued by Presiding Judge Fortunito L. Madrona of the Regional Trial Court (RTC) of Ormoc City, Branch 35. Records, p. 17.

[10] Executive Order No. 81, Sec. 12 provides:

Section 12. Legal Matters and Cases. The Bank shall have its own Legal Department, the head of which shall be appointed by the Board of Directors of the Bank upon the recommendation of the Chairman.

In appropriate cases, the Bank may avail also of the legal services of any government legal office authorized to render such services to government-owned or controlled corporations.

The Bank may, upon the recommendation of its Chief Legal Counsel, deputize any member of its legal staff to act as special sheriff in foreclosure cases, in the sale or attachment of the debtor's properties and in the enforcement of court writs and processes in cases involving the bank. The special sheriff of the Bank shall make a report to the proper court of any action taken by him, which shall treat such action as if it were an act of its own sheriffs in all respects. (emphasis supplied)

[11] Paragraph 4 of the Chattel Mortgage Contract states:

That it is hereby agreed that if at anytime the Mortgagor shall fail to pay any amortization on the indebtedness or the interest when due, or effective upon the breach of any condition on this mortgage contract and in addition the remedies herein stipulated, the Mortgagee is hereby authorized to take physical possession of the mortgaged property including its premises and/or remove it to some other place either in preparation to foreclosure sale or for whatever purpose it may deem necessary to recover its investment and, upon demand, the Mortgagor shall peacefully surrender the same to the custody of the Mortgagee or its authorized representative. (emphasis supplied)

A similar provision is found in paragraph 5 of the real estate mortgage contracts:

Effective upon the breach of any condition of this mortgage and in addition to the remedies herein stipulated, the Mortgagee is [...] likewise appointed attorney-in-fact of the Mortgagor with full power and authority, to take actual possession of the mortgaged property, to lease any of the mortgaged property, to collect rents, to eject tenants, to execute Bills of sale, lease or agreement that may be deemed convenient ... make repairs or improvements on the mortgaged property and pay the same and perform any other act which the Mortgagee may deem convenient for the proper administration of the mortgaged property.... (emphasis supplied)

[12] Letter dated April 27, 1998. Exhibit "14," records, p. 1071.

[13] The DBP special sheriff issued the following notices of sale at public auction:

Date

Property to be sold

Date of sale at public auction

April 1, 1998

real properties

May 6, 1998

July 21, 1998

real properties

September 16, 1998

August 23, 1998

chattel

September 16, 1998

[14] Docketed as Civil Case No. 3592-O. Respondents included a prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order.

[15] Civil Code, Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due and observe honesty and good faith.

[16] Supra note 11.

[17] In the case of *Tan Chun Tic v. West Coast Hurd* [54 Phil. 361 (1930)], we declared pactum commissorium as null and void in view of Articles 1859 and 1884 (now 2088 and 2137) of the Civil Code. There is pactum commissorium when:

- the debtor mortgaged (or pledged) a real property as security for the payment of the principal obligation and
- the deed of pledge or mortgage contains a stipulation allowing the creditor to appropriate the mortgaged (or pledged) real property upon the debtor's default.

Thus, it is a forfeiture clause in a deed of pledge or mortgage. See also *A. Francisco Realty and Development Corporation v. Court of Appeals*, 358 Phil. 833 (1998).

[18] Exhibit "20," records, p. 1078.

[19] Exhibit "21," records, p. 1079.

[20] Act 3135, Sec. 4. The sale shall be made at public auction, between the hours of nine in the morning and four in the afternoon, and shall be under the direction of the sheriff of the province, the justice or auxiliary justice of peace of the municipality in which such sale has to be made, or of a notary public of said municipality, who shall be entitled to collect a fee of Five pesos for each day of actual work performed, in addition to his expenses. (emphasis supplied)

[21] See footnote 10.

[22] Penned by Presiding Judge Fortunito L. Madrona. Rollo, pp. 106-118.

[23] Docketed as CA G.R. CV-No. 74660.

[24] *Baluyut v. Poblete*, G.R. No. 144435, 6 February 2007, 514 SCRA 370, 380 citing *Cabotaje v. Pudunan*, G.R. No. 134712, 13 August 2004, 436 SCRA 423, 432.

[25] Jose B.L. Reyes, 1 *An Outline Of Philippine Civil Law* 1964 ed., 37.

[26] *Supra* note 8.

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

[28] See Civil Code, Art. 2088 provides:

Article 2088. The creditor cannot appropriate the things given by way of pledge or mortgage or dispose of them. Any stipulation to the contrary is null and void.

See also Civil Code, Art. 2087. It provides:

Article 2137. The creditor does not acquire the ownership of the real estate for non-payment of debt within the period agreed upon.

Every stipulation to the contrary shall be void. But the creditor may petition the court for the payment of the debt or the sale of the real property. In this case, the Rules of Court on the foreclosure of mortgages shall apply. (emphasis supplied)

[29] *Solidbank Corporation/Metropolitan Bank and Trust Company v. Tan*, G.R. No. 167346, 2 April 2007, 520 SCRA 123, 129.

[30] See *Banco de Oro-EPCI, Inc. v. JAPRL Development Corporation*, G.R. No. 179901, 15 April 2008.

[31] *Supra* note 10.

[32] 73 Phil. 555 (1942).

[33] *Id.* at 556.

[34] *Supra* note 11.

[35] G.R. No. 167058, 9 July 2008.

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