

SPOUSES GEORGE R. TAN AND SUSAN L. TAN, PETITIONERS, VS. BANCO DE ORO UNIBANK, INC., RESPONDENT.*G.R. No. 188792. January 10, 2011*

Ponente: NACHURA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-188792/>**NACHURA, J.:**

These consolidated petitions assail the Court of Appeals (CA) September 18, 2009 Decision[1] and December 16, 2009 Resolution[2] in CA-G.R. SP No. 98307 and CA-G.R. SP No. 101421; and its March 12, 2009 Decision[3] and July 15, 2009 Resolution[4] in CA-G.R. SP No. 102799.

In CA-G.R. SP No. 98307 and CA-G.R. SP No. 101421, the appellate court dissolved the writ of preliminary injunction issued by the Regional Trial Court (RTC) of Quezon City, Branch 81, in Civil Case No. Q-07-59545, restraining the foreclosure of the real estate mortgage constituted by Spouses George R. Tan and Susan L. Tan (hereafter referred to as Spouses Tan) in favor of Banco De Oro Unibank, Inc. (BDO). The CA concluded that the issuance of the writ was unfounded and unsubstantiated. In CA-G.R. SP No. 102799, the CA found that the bond set by the RTC was grossly insufficient to cover all the damages which BDO might sustain by reason of the injunction if the court should finally decide that Spouses Tan were not entitled to the writ. It thus remanded the case to the RTC for the determination of the proper injunction bond which should not be less than P32 Million.

After the filing of the Reply to BDO's Comment in G.R. No. 188792 and while awaiting BDO's Comment on the petition in G.R. Nos. 190677-78 and Spouses Tan's Comment on the petition in G.R. Nos. 190699-700, BDO moved for extension of time to file the appropriate pleading in view of the settlement of the consolidated cases.[5]

On December 16, 2010, Spouses Tan and BDO filed a Joint Manifestation and Motion to Dismiss,[6] alleging that they have come to an agreement for the amicable resolution of their respective claims to avoid the inconvenience of litigation. Attached to the motion are the Compromise Agreement executed by the parties and a copy of the RTC decision approving the agreement. The Compromise Agreement reads:

COMPROMISE AGREEMENT

This Agreement, which shall supplement Memorandum of Agreement dated 27 May 2010, is made and executed this ____ day of _____ 2010, by and between:

SPOUSES GEORGE R. TAN AND SUSAN L. TAN, Filipinos, of legal age, residing at 42 Ifugao St., La Vista Subd., Brgy. Pansol, Quezon City, hereinafter referred to as "Spouses Tan";

- and -

BANCO DE ORO UNIBANK, INC., a banking corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address at 10/F BDO Corporate Center South Tower, Makati Avenue corner H.V. Dela Costa St., Makati City, represented herein by its Senior Vice President, Melanie S. Belen, and Vice President, Emily D. Samoy, as evidenced by the Special Power of Attorney indicating their authority, a copy of which is attached hereto as Annex "A," hereinafter referred to as the

"Bank";

(herein after referred to singly as a "Party," and collectively as "Parties").

WITNESSETH: That

Spouses Tan obtained various loans and other credit accommodations from the Bank in the total principal amount of Fifty Nine Million Nine Hundred Eighty Four Thousand Six Hundred Twenty Four and 19/100 Pesos (P59,984,624.19). As security for the loans and other credit accommodations, Spouses Tan executed a Real Estate Mortgage and Amended Real Estate Mortgage on 15 January 2004 and 02 February 2004, respectively, covering a parcel of land located at 42 Ifugao Street, La Vista Subdivision, Quezon City, covered by Transfer Certificate of Title ("TCT") No. 13600, registered in the name of George Sin Gee Tan married to Susan Lim Tan (the "Property").

Sometime in 2006, Spouses Tan defaulted in the payment of their loan obligations. Hence, the Bank initiated foreclosure proceedings on the foregoing Real Estate Mortgage. At the auction sale on 03 December 2009, the Bank emerged as highest bidder and was issued Certificate of Sale dated 04 December 2009.

Spouses Tan filed a complaint for annulment of mortgage with the Regional Trial Court of Quezon City, docketed as Civil Case No. Q-07-59545 (the "Case"), pending before Branch 81 (the "Court").

In order to put an end to the protracted litigation, the Bank has accepted the proposal of Spouses Tan and entered into and executed Memorandum of Agreement dated 27 May 2010 (the "MOA").

Further to the MOA, and as a supplement thereto, and pursuant to the Court's Order given in open court on 07 July 2010, the parties have agreed to execute this Agreement.

NOW, THEREFORE, for and in consideration of the foregoing premises, the parties hereby agree to the following terms and conditions:

- The Bank shall allow Spouses Tan to redeem the Property for a total redemption price of SIXTY MILLION PESOS (P60,000,000.00), subject to the following terms:
 - THIRTY MILLION PESOS (P30,000,000.00), payable in five (5) years beginning June 2010, or until June 2015 (the "Term"). Spouses Tan shall pay Two Hundred Fifty Thousand Pesos (P250,000.00) a month, for sixty (60) months, with a balloon payment in the amount of Fifteen Million Pesos (P15,000,000.00) at the end of the Term.
 - For and in consideration of the amount of THIRTY MILLION PESOS (P30,000,000.00), Spouses Tan shall cede, transfer and convey to and in favor of the Bank, all its rights, possession, title and interests in a parcel of land in Roxas City covered by TCT No. T-16024, registered in the name of Spouses Tan (the "Roxas Property").
 - On December 2010, or upon expiration of the redemption period, Spouses Tan shall allow the Bank to consolidate title over the Property.
 - Upon consolidation of title in the Bank's name, the Bank and Spouses Tan shall execute a Contract to Sell covering the Property in accordance with the terms under Section 1.
 - Upon full payment of the amount under Section 1 (a), and the cession, transfer and conveyance to the Bank of the Roxas Property pursuant to Section 1 (b), the parties agree that Spouses Tan's personal loan obligations with the Bank, including Spouses Tan's personal loan obligations with then Equitable PCI Bank, shall be deemed fully settled.
 - After execution and signing, the parties shall file this Agreement with the Court for approval.

The parties hereby agree to move for the approval of this Agreement before the Court. However, the obligations under this Agreement shall be immediately enforceable even prior to the approval of this Agreement.

- Parties agree to move for the dismissal of the Case, within fifteen (15) days from execution of all documents necessary to implement this Agreement.

- All expenses, fees, and taxes in connection with: (a) the cession, transfer and conveyance to the Bank of the Roxas Property; and (b) the consolidation of title of the Property in the Bank's name, shall be for the account of the Bank.

- Upon failure of Spouses Tan to comply with any of the terms and conditions under this Agreement, the Bank shall be entitled, without necessity of any demand or notice:

- To take immediate possession of the Property. Spouses Tan agree to peacefully surrender and immediately vacate the Property.

- To file the necessary motion or pleading with the Court to implement this Agreement, and/or enforce its rights under law and equity.

- Parties hereby mutually and irrevocably waive all claims, counterclaims, demands, and causes of action, which they raised, or could have raised, against each other, including future claims of whatever kind, in connection with the Case and the Property.

- The parties confirm that the terms and conditions contained in this Agreement have been mutually agreed upon, without any act of force, fraud or undue intimidation. The parties further confirm that they have consulted their respective legal counsel, and that they understand the legal consequences of this Agreement. Accordingly, the parties hereby agree to abide by the terms and conditions hereof, which have the force and effect of a lawful right and a demandable obligation.

- In the event that any one or more of the provisions of this Agreement be later declared invalid, illegal or unenforceable by any court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall in no way be impaired or affected thereby.

- The parties hereto intend for this Agreement to supplement the MOA. All terms and conditions of the MOA shall remain in full force and effect and remain unmodified except as specifically set forth in this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above-written.

BANCO DE ORO UNIBANK, INC.

By:

Sgd. Sgd.

MELANIE S. BELEN GEORGE R. TAN

Sgd. Sgd.

EMILY D. SAMOY SUSAN L. TAN[7]

In a decision[8] dated September 15, 2010, the RTC approved the compromise agreement. Having been sealed with court approval, the compromise agreement shall govern the respective rights and obligations of the parties. In view of the foregoing, the dismissal of the consolidated petitions is in order.

WHEREFORE, premises considered, the Joint Manifestation and Motion to Dismiss is hereby GRANTED.

Consequently, the consolidated petitions are DISMISSED. The cases are considered CLOSED and TERMINATED.

SO ORDERED.

Velasco, Jr.,[*] Leonardo-De Castro,**] Peralta, and Bersamin,***] JJ., concur.

[*] In lieu of Associate Justice Antonio T. Carpio per Raffle dated October 13, 2010.

**] In lieu of Associate Justice Jose Catral Mendoza per Raffle dated October 13, 2010.

***] In lieu of Associate Justice Roberto A. Abad per Raffle dated March 8, 2010.

[1] Penned by Associate Justice Jose Catral Mendoza (now a member of this Court), with Associate Justices Myrna Dimaranan-Vidal and Antonio L. Villamor, concurring; rollo (G.R. Nos. 190699-700), pp. 56-87.

[2] Id. at 89-94.

[3] Penned by Associate Justice Monina Arevalo-Zenarosa, with Associate Justices Mariano C. del Castillo (now a member of this Court) and Ramon M. Bato, Jr., concurring; rollo (G.R. No. 188792), pp. 29-45.

[4] Id. at 83-85.

[5] Rollo (G.R. Nos. 190699-700), pp. 757-759.

[6] Id. at 771-773.

[7] Id. at 760-762.

[8] Rollo (G.R. Nos. 190677-78), pp. 150-153.

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