

THIRD DIVISION

[G.R. No. 166970, August 17, 2011]

**MA. ANA M. TAMONTE AND EDILBERTO A. TAMONTE,
PETITIONERS, VS. HONGKONG AND SHANGHAI BANKING
CORPORATION LTD., HONGKONG AND SHANGHAI BANKING
CORPORATION STAFF RETIREMENT PLAN, REPRESENTED BY
ATTY. MANUEL G. MONTECILLO, STUART P. MILNE AND
ALEJANDRO CUSTODIO; ALEJANDRO CUSTODIO; RTC CLERK OF
COURT & EX-OFFICIO SHERIFF AND SHERIFF IN CHARGE
CLEMENTE BOLOY AND BENEDICTO G. HEBRON, RESPECTIVELY,
RESPONDENTS.**

D E C I S I O N

PERALTA, J.:

Assailed in this petition for review on *certiorari* are the Decision^[1] dated October 12, 2004 and Resolution^[2] dated January 25, 2005 of the Court of Appeals (CA) issued in CA-G.R. CV No. 66920. The CA affirmed the Order dated January 8, 1998 of the Regional Trial Court (RTC), Branch 274, Parañaque, Metro Manila, dismissing the complaint filed by petitioners Ma. Ana M. Tamonte and Edilberto A. Tamonte for annulment of the foreclosure proceedings.

Petitioner Ma. Ana M. Tamonte (Ana) was a regular employee of the Hongkong and Shanghai Banking Corporation Ltd. (the bank) and a member of the Hongkong and Shanghai Banking Corporation Staff Retirement Plan (HSBC SRP). The HSBC SRP was established through its Board of Trustees for the purpose of providing retirement, disability and loan benefits to all its regular employees. Petitioner Ana applied for a housing loan with the HSBC SRP. To secure the said loan, petitioners and respondent HSBC SRP entered into a real estate mortgage contract^[3] where petitioners mortgaged their property covered by TCT No. 17169 of the Register of Deeds of Parañaque. The monthly amortizations of the loan were paid by petitioner Ana through automatic payroll deductions.

In January 1993, a labor dispute arose between the bank and the employees' union, where petitioner Ana was a member thereof, which culminated in a strike staged on December 22, 1993. Majority of the bank employees, which included petitioner Ana, were dismissed from service for abandonment. Petitioner Ana and the other dismissed bank employees had filed with the Labor Arbiter an illegal dismissal case against the bank. The Labor Arbiter declared the strike illegal. The labor case has now reached Us on a petition for review filed by the employees against the bank.

In a letter^[4] dated November 28, 1994 addressed to petitioner Ana, respondent HSBC SRP demanded the payment of her unpaid accounts as of November 25, 1994, which included her housing loan. Petitioners failed to settle their obligation; thus, respondent HSBC SRP effected the foreclosure of petitioners' property subject

of the real estate mortgage. The foreclosure proceeding was conducted on May 28, 1996 with Alejandro L. Custodio (Custodio), one of the herein respondents, emerging as the highest bidder.^[5]

On October 29, 1997, petitioners filed with the RTC of Parañaque, Metro Manila, a Complaint^[6] for Annulment of the Entire Proceedings in Foreclosure No. 96-037 with Prayer for Damages, Temporary Restraining Order, Preliminary and Final Injunction, etc. against the bank, HSBC SRP, represented by Atty. Manuel G. Montecillo, Stuart P. Milne and Alejandro L. Custodio and the RTC Clerk of Court and *Ex-Officio* Sheriff Benedicto G. Hebron.

Respondents HSBC SRP and Custodio filed a Motion to Dismiss^[7] with Opposition to petitioners' prayer for the issuance of a writ of preliminary injunction on the ground that the complaint stated no cause of action. Respondents contended that the extrajudicial foreclosure of petitioners' mortgaged property was proper and regular as the full amount of the loan had accelerated after petitioner Ana had ceased to be an employee of the bank as she was terminated for cause and petitioners were unable to settle the same upon demand; and that petitioner Ana's continued employment with the bank was the sort of the security/guaranty for her loan. Respondents also stated that petitioners had not made any single payment since December 1993 which made them in default under their mortgage contract. Respondents argued that they can proceed with the foreclosure of the mortgaged property pending the labor dispute, since the foreclosure proceeding was civil in nature which arose from a purely civil obligation and pursuant to its rights under the mortgage contract. Respondents continued that even assuming petitioners had been making payments, these cannot operate as payment for all intents and purposes under the law, because they were not for the full and accelerated obligation.

Respondent bank filed a Motion to Dismiss,^[8] alleging, among others, that no cause of action existed against it, since it was not a party to the mortgage contract nor did it participate in the foreclosure proceedings sought to be annulled.

Respondent HSBC SRP filed a Supplemental Motion to Dismiss^[9] stating that their case was anchored on the same facts obtaining in the case of *Cadena v. HSBC* filed in the RTC which had already been dismissed by the RTC after finding that the employee concerned had defaulted in the payment of her monthly amortizations which gave rise to the foreclosure of the mortgaged property; that just like the *Cadena case*, herein petitioners did not make any single payment of their housing loan since petitioner Ana's termination in December 1993, thus, their housing loan became delinquent and the eventual foreclosure of their mortgaged property.

Petitioners filed their Consolidated Opposition^[10] to the Motion to Dismiss which stated, among others, that petitioner Ana's continued employment with the bank was never meant to secure the housing loan extended to petitioners. Petitioners did not deny that no amortization payments were made after December 1993, but claimed that it was not the cause of the foreclosure action but petitioner Ana's termination.

In an Order^[11] dated January 8, 1998, the RTC dismissed the complaint. The RTC

found that petitioners did not pay their monthly amortizations after petitioner Ana's termination in December 1993 which was a violation of the terms and conditions of their housing loan and the real estate mortgage contract they executed as security therefor; that when petitioners defaulted in the payment of their monthly amortizations, respondent HSBC SRP had the right to foreclose the mortgage property pursuant to their mortgage contract. The RTC also ruled that petitioners' obligation to regularly pay their housing loan was purely a civil obligation which arose from a contract which had the force of law between the parties and should be complied with in good faith.

Petitioners' motion for reconsideration was denied in an Order^[12] dated June 1, 1999.

Petitioners filed their appeal with the CA. After the filing of the parties' respective Briefs, the case was submitted for resolution.

In a Decision dated October 12, 2004, the CA dismissed the appeal and affirmed the RTC decision. In dismissing the appeal, the CA affirmed the RTC's findings that petitioners defaulted in the payment of their monthly amortizations on the housing loan, and despite demand, petitioners failed and refused to pay their obligations. The CA also found speculative and without factual basis petitioners' claim that respondent HSBC SRP would not have accepted their monthly amortizations after petitioner Ana's dismissal as what respondents did to petitioner Ana's colleagues. It also ruled that the pendency of the labor case between petitioner Ana and the bank would not suspend their default in the payment of their loan and the foreclosure sale, since the demand for the amortizations on the loan involved a creditor-debtor rather than an employer-employee relationship.

Petitioners filed their motion for reconsideration, which the CA denied in a Resolution dated January 25, 2005.

Hence, the instant petition for review filed by petitioners on the issue of:

WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE ERROR
IN SUSTAINING THE FINDING THAT PETITIONERS HAD NO CAUSE OF
ACTION.^[13]

Petitioners reiterate their arguments raised in the CA. They insist that respondent HSBC SRP foreclosed their property because of petitioner Ana's termination from employment and not because of their default in the payment of their loan obligation. Petitioners contend that based on the allegations in respondents HSBC SRP and Custodio's Motion to Dismiss filed in the RTC, the default respondents spoke of was petitioners' failure to pay the entire balance of their loan in a single payment upon the cessation of petitioner Ana's employment with the bank. Such being the case, petitioners claim that the question that arose was whether or not respondent HSBC SRP had the right to withdraw the loan benefit from petitioner Ana, considering that the issue of her employment status has not yet been resolved with finality as the labor case is still pending with Us. Petitioners admitted that while it had not made any amortization payments since the termination of petitioner Ana from her employment on December 27, 1993, the RTC and the CA erred in finding that it was

the failure to make the amortization payments that placed petitioners in default which led to the foreclosure of their property. The arguments raised by respondents in their Motion to Dismiss refuted the CA declaration that it was speculative for petitioners to claim that the amortization payments would not be accepted had they made their efforts to do so.

We are not persuaded.

It appears that respondent HSBC SRP's Motion to Dismiss on the ground that the complaint failed to state a cause of action cited the failure of petitioners to make a single payment of the entire balance of their housing loan obligation which respondent claimed to have accelerated after she was dismissed from her employment. Notably, however, it was also stated in the same motion that petitioners had not paid a single monthly amortization after petitioner Ana's termination from her employment in December 1993, which petitioners did not deny but even admitted. Moreover, we note that in their Supplemental Motion to Dismiss, respondent HSBC SRP reiterated that petitioners did not make any single payment on their housing loan after December 1993, thus, they resorted to foreclosure proceedings. Thus, there is no basis to petitioners' claim that the default which led the respondent to foreclose the mortgaged property was mainly due to petitioner Ana's discontinued employment.

Petitioners were in default in the payment of their loan obligation when they never made any payment after December 1993. In fact, the demand letter sent to petitioners, dated November 28, 1994, showed petitioners' unpaid accounts to respondents as of November 25, 1994, and despite receipt of the demand letter, petitioners still failed to settle the same. Under the real estate mortgage contract executed between respondent HSBC SRP as mortgagee and petitioners as mortgagors, it was provided, among others, that:

III

THE MORTGAGOR(S) hereby undertake(s) and agree(s) to pay to the MORTGAGEE, upon demand, any and all sums which may be or become due from and owing by the MORTGAGOR(S) to said MORTGAGEE, under and in virtue of the credit or credit facilities hereby granted or hereinafter to be granted by the latter to the former, together with the interest thereon at the rate computed in the manner set out in Article II hereof.

[14]

Considering that petitioners failed to pay their obligation with respondent HSBC SRP, the latter, as mortgagee, resorted to extrajudicial foreclosure of petitioners' mortgaged property which respondents did pursuant to the provisions of their real estate mortgage contract, to wit:

VI

H. In the event that the MORTGAGOR(S) should fail to pay the sums of money secured by this mortgage, or any part thereof in accordance with the terms and conditions herein set forth, or should the MORTGAGOR(S)