

FIRST DIVISION

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

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

D E C I S I O N

CORONA, J.:

This petition^[1] seeks to the 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 comissorium*^[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:

1. [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;
2. [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;
3. [petitioner] to pay P1,000,000 as exemplary damages;
4. [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.
