

THIRD DIVISION

[G.R. No. 178449, October 17, 2008]

**METROPOLITAN BANK AND TRUST COMPANY, PETITIONER, VS.
SPOUSES ELISA TAN AND ANTONIO TAN AND SPOUSES LILIAN
TAN AND MARCIAL SEE, RESPONDENTS.**

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure which seeks to set aside the Decision^[1] of the Court of Appeals dated 31 January 2007 in CA-G.R. CV No. 86214 affirming *in toto* the Decision^[2] of Branch 32 of the Regional Trial Court (RTC) of Manila in Civil Case No. 97-85012 and its Resolution^[3] dated 15 June 2007 denying petitioner's motion for reconsideration.

The factual antecedents are as follows:

In June 1974, Ylang-Ylang Merchandising Company, a partnership between Angelita Rodriguez and respondent Antonio Tan, obtained a loan in the amount of P250,000.00 from petitioner Metropolitan Bank and Trust Company (Metrobank). To secure payment of the same, respondents spouses Marcial See and Lilian Tan^[4] constituted a real estate mortgage in favor of petitioner over their property consisting of 469.40 square meters, located in the District of Paco, Manila, covered by Transfer Certificate of Title (TCT) No. 105233 of the Registry of Deeds of Manila. The mortgage, dated 14 June 1974, was annotated at the back of the title.^[5]

Subsequently, after the partnership had changed its name to Ajax Marketing Company, albeit without changing its composition, it obtained another loan in July 1976 in the amount of P150,000.00 from Metrobank. Again, to secure the loan, spouses Marcial See and Lilian Tan executed in favor of Metrobank a second real estate mortgage dated 26 August 1976 over the same property. As in the first instance, the mortgage was annotated at the back of TCT No. 105233.^[6]

On 19 February 1979, the partnership (Ajax Marketing Company) was converted into a corporation denominated as Ajax Marketing and Development Corporation (Ajax Marketing), with the original partners (Angelita Rodriguez and Antonio Tan) as incorporators and three additional incorporators, namely, respondent Elisa Tan, the wife of respondent Antonio Tan, and Jose San Diego and Tessie San Diego. Ajax Marketing obtained from Metrobank a loan in the amount P600,000.00, the payment of which was secured by another real estate mortgage executed by the spouses Marcial See and Lilian Tan over the same property in favor of Metrobank. The third real estate mortgage was annotated at the back of TCT No. 105233.

On 2 December 1980, the three loans with an aggregate amount of P1,000,000.00

were re-structured and consolidated into one loan and Ajax Marketing, represented by Antonio Tan as Board Chairman/President and in his personal capacity as solidary co-obligor, and Elisa Tan as Vice-President/Treasurer and in her personal capacity as solidary co-obligor, executed **Promissory Note (PN) No. BDS-3605**. Said loan was payable in eight (8) equal quarterly installments of P125,000.00 starting 2 March 1981 until fully paid.^[7]

On 24 April 1984, Metrobank filed a case for sum of money before the RTC of Manila against Ajax Marketing, Elisa Tan and Antonio Tan for another loan earlier obtained in the amount of P970,000.00 that the latter obtained from the former for which they executed **Promissory Note (PN) No. BDS-3583**. The case was docketed as Civil Case No. 84-24065.^[8] Subsequently, the lower court decided this case in favor of Metrobank which decision was affirmed by the Court of Appeals.

For failure of Ajax Marketing to pay its obligation contained in PN No. BDS-3605, Metrobank foreclosed the real estate mortgage. On 19 June 1984, the mortgaged property was sold at public auction for P1,775,040.00 to Metrobank, it having the highest and winning bid.

On 11 December 1984, Civil Case No. 85-33933 for *Annulment and Cancellation of Extra-judicial Foreclosure Sale with Preliminary Injunction, Restraining Order and Damages* was filed by Ajax Marketing and spouses Marcial See and Lilian Tan, represented by their Attorney-in-Fact, Elisa Tan, and spouses Antonio Tan and Elisa Tan (spouses Tan) against Metrobank and the Registry of Deeds of Manila. The complaint asked that the extrajudicial foreclosure, as well as the auction sale, be declared null and void on the ground that the real estate mortgages constituted on the property covered by TCT No. 105233 have been extinguished or novated when PN No. BDS-3605 was executed. The trial court upheld the validity of the extra-judicial foreclosure. On appeal to the Court of Appeals, the appellate court affirmed the decision of the trial court. The decision was appealed to the Supreme Court.

In a letter dated 2 February 1995, spouses Antonio Tan and Elisa Tan wrote Metrobank a letter^[9] containing, *inter alia*, the following:

To end the controversy once and for all, the undersigned spouses hereby proposes (sic) to fully settle the obligations of the borrowers in exchange of your release of the Real Estate Mortgage you are presently holding, to wit:

1. We propose to pay the total amount of P2MM to be paid as follows:

a) Downpayment of P600,000.00 two (2) weeks upon approval of our proposal;

b) Balance of P1.4MM shall no longer be subject to interest and to be liquidated in 24 months or P58,333.33 to be covered by postdated checks.

2. Attorney's fees shall be separately paid by us.

On 14 September 1995, this Court rendered its Decision^[10] in Civil Case No. 85-33933 for *Annulment and Cancellation of Extra-judicial Foreclosure Sale with*

Preliminary Injunction, Restraining Order and Damages. We ruled:

[P]etitioners argue that a novation occurred when their three (3) loans which are all secured by the same real estate property covered by TCT No. 105233 were consolidated into a single loan of P1 million under Promissory Note No. BDS-3605, thereby extinguishing their monetary obligations and releasing the mortgaged property from liability.

x x x x

The attendant facts herein do not make a case of novation. There is nothing in the records to show the unequivocal intent of the parties to novate the three loan agreements through the execution of PN No. BDS-3065. The provisions of PN No. BDS-3605 yield no indication of the extinguishment of, or an incompatibility with, the three loan agreements secured by the real estate mortgages over TCT No. 105233. x x x

x x x x

x x x [P]etitioners posit that the extra-judicial foreclosure is invalid as it included two unsecured loans: one, the consolidated loan of P1.0 million under PN BDS No. 3605, and two, the P970,000.00 loan under PN BDS No. 3583 subsequently extended by Metrobank.

An action to foreclose a mortgage is usually limited to the amount mentioned in the mortgage, but where on the four corners of the mortgage contracts, as in this case, the intent of the contracting parties is manifest that the mortgaged property shall also answer for future loans or advancements then the same is not improper as it is valid and binding between the parties. For merely consolidating and expediently making current the three previous loans, the loan of P1.0 million under PN BDS No. 3605, secured by the real estate property, was correctly included in the foreclosure's bid price. The inclusion of the unsecured loan of P970,000.00 under PN BDS No. 3583, however, was found to be improper by public respondent which ruling we shall not disturb for Metrobank's failure to appeal therefrom. Nonetheless, the inclusion of PN BDS No. 3583 in the bid price did not invalidate the foreclosure proceedings. As correctly pointed out by the Court of Appeals, the proceeds of the auction sale should be applied to the obligation pertaining to PN BDS No. 3605 only, plus interests, expenses and other charges accruing thereto. It is Metrobank's duty as mortgagee to return the surplus in the selling price to the mortgagors.

On 12 September 1997, spouses Elisa Tan and Antonio Tan and spouses Lilian Tan and Marcial See filed a civil case for Specific Performance, Injunction and Damages before the RTC of Manila, Branch 30, against Metrobank and Ajax Marketing (origin of the instant petition). They prayed, among other things, that Metrobank be ordered to allow them (spouses Tan) to exercise their right of redemption over the subject foreclosed property and to accept the amount of P1,609,334.61 as the redemption price, and to order Ajax Marketing to reimburse them the amount which they will pay as redemption price for the foreclosed property.^[11]

On 4 November 1997, an amended complaint was filed.^[12] They included as defendants John Doe and Peter Doe. They made the following allegations:

Spouses See and spouses Tan alleged that the property covered by TCT No. 105233, though registered in the names of spouses Marcial See and Lilian Tan See is, in reality, co-owned by respondents and their other siblings. They further allege that after the foreclosure sale, they offered to redeem the property within the one-year redemption period and they discovered that Metrobank included in the bid price an amount covered by PN No. BDS-3583 not secured by the mortgage over TCT No. 105233. They claim that while the tender and offer of the redemption was seasonably made, same cannot be made because Metrobank was ambivalent with respect to the redemption price. Redemption, they claim, was rendered doubly difficult when Metrobank filed Civil Case No. 84-24065 with the RTC of Manila to collect on PN No. BDS-3583. On their part, they filed Civil Case No. 85-33933 before the RTC of Manila for annulment and cancellation of the extra-judicial foreclosure of the mortgage over TCT No. 105233 rendering more difficult the resumption of negotiation for redemption of the foreclosed property. On 14 September 1995, the Supreme Court, in G.R. No. 118585, declared the extra-judicial foreclosure valid but found the inclusion of PN No. BDS-3583 in the bid price to be improper but same did not invalidate the foreclosure proceedings. After said decision, they resumed to negotiate for the redemption of the foreclosed property and tendered and offered P1,609,334.61 which Metrobank rejected and declined. They further alleged that Metrobank encouraged their other siblings to repurchase the foreclosed property at a price over and above the lawful redemption price. In fact, Metrobank sold the property to John and Peter Doe for P11,500,000.00 in complete disregard of their right of redemption. They claim that Metrobank cannot sell the property because ownership thereof has not been vested absolutely in its favor until they have exercised their right of redemption. The sale of the property to their other siblings was fraudulent and therefore void. Because of the sale, they and their other siblings were divested of their share in the property and are additionally required by the purchasing siblings to reimburse a portion of the repurchase price (P11,500,000.00), thereby fomenting trouble within the family. They asked, among other things, that the sale of the property between Metrobank and defendants John and Peter Doe be declared null and void *ab initio* and that Metrobank be ordered to allow them to exercise their right of redemption by accepting the amount of P1,609,334.61 as the redemption price.

On 6 November 1997, Spouses Marcial See and Lilian Tan executed a document entitled "*Deed of Redemption and Reconveyance*" wherein it was stated that the latter (redemptioners) paid Metrobank on 12 September 1997 the amount of P11,500,000.00 representing the redemption price for the reconveyance/redemption of the foreclosed property (TCT No. 105233).^[13]

On 2 February 1998, Metrobank filed a Motion to Dismiss on the ground that the claims and demands in the amended complaint have been extinguished. Metrobank disclosed that the subject property was not sold to John and Peter Doe, but to spouses Marcial See and Lilian Tan. As registered owners of the property, the spouses were allowed to exercise their right of redemption on 6 November 1997 as evidenced by the Deed of Redemption and Reconveyance.^[14] On 7 December 1998, the motion was denied.^[15]

On 3 February 1999, Metrobank filed its Answer with Counterclaim. It declared that John and Peter Doe are none other than spouses Marcial See and Lilian Tan. It alleged that neither Ajax Marketing nor the plaintiffs (respondents herein) were able to redeem the subject property within the one-year period which commenced from the date (20 June 1984) the Certificate of Sale issued by the auctioning sheriff was registered with the concerned Registry of Deeds. Respondents did not even approach Metrobank to negotiate the redemption of said property. Instead, Ajax Marketing and respondents instituted on 11 December 1984 an action to annul said extra-judicial foreclosure which foreclosure was upheld by the Supreme Court in G.R. No. 118585 on 14 September 1995. It was only in 1997 that spouses Marcial See and Lilian Tan communicated with Metrobank their intention to buy back the subject property. Metrobank agreed to sell the property for the "redemption" price of P11,500,000.00. It further denied the allegations with respect to the actual ownership of the subject property. It added that the sale of the foreclosed property to spouses Marcial See and Lilian Tan was not fraudulent and that property was redeemed at a mutually agreed price. It explained that spouses Marcial See and Lilian Tan are the proper "redemptioners" of the subject property being the registered owners thereof. As such, Metrobank had the right to allow said spouses to redeem the property and to reconvey the same under mutually agreed terms. It stressed that assuming *arguendo* that spouses Marcial See and Lilian Tan never redeemed the subject property, spouses Elisa Tan and Antonio Tan offered the amount of P1,609,334.61 when they communicated with Metrobank in 1997 which amount they believe was the redemption price "*in esse*," Metrobank had rightfully rejected the same for Act No. 3135, as amended, requires the payment of the redemption price equivalent to the winning bid price (P1,775,040.00) plus interest up to the time of redemption, together with the amount of any assessments or taxes paid by the purchaser after the auction sale, and interest on such last-named amount at the same rate.^[16]

In its Reply to the Answer, respondents claim the "Deed of Redemption and Reconveyance" does not bear the true and genuine signatures of spouses Marcial See and Lilian Tan. It said that assuming *arguendo* that the Deed of Redemption and Reconveyance is true, the difference between P11,500,000.00 and P1,775,040.00 should be refunded to them.^[17]

On 10 January 2000, the pre-trial of the case was terminated.^[18] Thereafter, the case was heard.

Respondents-spouses Elisa and Antonio Tan testified in court on their behalf, while for the defense, only Rito A. Negado, employee of Metrobank, testified on respondents' loan with Metrobank, the execution of respondents Marcial See and Lilian Tan of the accommodation mortgage in favor of Metrobank, and respondents' failure to pay their obligation which led Metrobank to initiate extra-judicial foreclosure proceedings.

While the case was being heard, the presiding judge hearing the case voluntarily inhibited himself from the case. Consequently, the case was re-raffled to Branch 32 of RTC, Manila.^[19]

On 5 May 2005, the trial court rendered its decision, the dispositive portion of which reads: