

THIRD DIVISION

[G.R. No. 162333, December 22, 2008]

**BIENVENIDO C. TEOCO AND JUAN C. TEOCO, JR., PETITIONERS,
VS. METROPOLITAN BANK AND TRUST COMPANY, RESPONDENT.**

D E C I S I O N

REYES, R.T., J.:

REAL creditors are rarely unwilling to receive their debts from any hand which will pay them.^[1] **Ang tunay na may pautang ay bihirang tumanggi sa kabayaran mula kaninuman.**

This is a petition for review on *certiorari* seeking the reversal of the Decision^[2] of the Court of Appeals (CA) in CA-G.R. CV No. 58891 dated February 20, 2004 which annulled and set aside the decision of the Regional Trial Court (RTC) of Catbalogan, Samar on July 22, 1997 in Cadastral

Record No. 1378. The RTC originally dismissed the petition for writ of possession filed by respondent Metropolitan Bank and Trust Company (Metrobank) on the ground that intervenors and present petitioners, the brothers Bienvenido Teoco and Juan Teoco, Jr. (the brothers Teoco), have redeemed the subject property. The CA reversed this dismissal and ordered the issuance of a writ of possession in favor of respondent Metrobank.

Culled from the records, the facts are as follows:

Lydia T. Co, married to Ramon Co, was the registered owner of two parcels of land situated in Poblacion, Municipality of Catbalogan, Province of Samar under Transfer Certificate of Title (TCT) Nos. T-6220 and T-6910.^[3] Ramon Co mortgaged the said parcels of land to Metrobank for a sum of P200,000.00.

On February 14, 1991, the properties were sold to Metrobank in an extrajudicial foreclosure sale under Act No. 3135. One year after the registration of the Certificates of Sale, the titles to the properties were consolidated in the name of Metrobank for failure of Ramon Co to redeem the same within the one year period provided for by law. TCT Nos. T-6220 and T-6910 were cancelled and TCT Nos. T-8482 and T-8493 were issued in the name of Metrobank.

On November 29, 1993, Metrobank filed a petition for the issuance of a writ of possession against Ramon Co and Lydia Co (the spouses Co). However, since the spouses Co were no longer residing in the Philippines at the time the petition was filed, the trial court ordered Metrobank, on January 12, 1994 and again on January 26, 1994 to effect summons by publication against the spouses Co.

On May 17, 1994, the brothers Teoco filed an answer-in-intervention alleging that they are the successors-in-interest of the spouses Co, and that they had duly and

validly redeemed the subject properties within the reglementary period provided by law. The brothers Teoco thus prayed for the dismissal of Metrobank's petition for a writ of possession, and for the nullification of the TCTs issued in the name of Metrobank. The brothers Teoco further prayed for the issuance in their name of new certificates of title.

Metrobank, in its reply, alleged that the amount deposited by the brothers Teoco as redemption price was not sufficient, not being in accordance with Section 78 of the General Banking Act. Metrobank also said the assignment of the right of redemption by the spouses Co in favor of the brothers Teoco was not properly executed, as it lacks the necessary authentication from the Philippine Embassy.

On February 24, 1995, the trial court was informed that the brothers Teoco had deposited the amount of P356,297.57 to the clerk of court of the RTC in Catbalogan, Samar. The trial court ordered Metrobank to disclose whether it is allowing the brothers Teoco to redeem the subject properties. Metrobank refused to accept the amount deposited by the brothers Teoco, alleging that they are obligated to pay the spouses Co's subsequent obligations to Metrobank as well. The brothers Teoco claimed that they are not bound to pay all the obligations of the spouses Co, but only the value of the property sold during the public auction.

On February 26, 1997, the trial court reiterated its earlier order directing Metrobank to effect summons by publication to the spouses Co. Metrobank complied with said order by submitting documents showing that it caused the publication of summons against the spouses Co. The brothers Teoco challenged this summons by publication, arguing that the newspaper where the summons by publication was published, the *Samar Reporter*, was not a newspaper of general circulation in the Philippines. The brothers Teoco furthermore argued that Metrobank did not present witnesses to identify the documents to prove summons by publication.

RTC Disposition

On July 22, 1997, the RTC rendered its decision in favor of the brothers Teoco, to wit:

WHEREFORE, judgment is hereby rendered dismissing the petition for a writ of possession under Section 7 of Act 3135 it appearing that intervenor Atty. Juan C. Teoco, Jr. and his brother Atty. Bienvenido C. Teoco have legally and effectively redeemed Lot 61 and 67 of Psd-66654, Catbalogan, Cadastre, from the petitioner Metropolitan Bank and Trust Company.

Accordingly, Metrobank may now withdraw the aforesaid redemption money of P356,297.57 deposited by Juan C. Teoco, Jr., on February 10, 1992 with the clerk of court and it is ordered that the Transfer Certificate of Title Nos. T-8492 and T-8493 of Metropolitan Bank and Trust Company be and are cancelled and in their place new transfer certificates of title be issued in favor of Intervenors Attys. Bienvenido C. Teoco and Juan C. Teoco, Jr., of legal age, married, and residents of Calbiga, Samar, Philippines, upon payment of the prescribed fees therefore. No pronouncement as to costs.^[4]

According to the RTC, the case filed by Metrobank should be dismissed since intervenor Juan C. Teoco, Jr., by his tender of P356,297.57 to Metrobank on February 10, 1992, within the reglementary period of redemption of the foreclosed property, had legally and effectively redeemed the subject properties from Metrobank. This redemption amount is a fair and reasonable price and is in keeping with the letter and spirit of Section 78 of the General Banking Act because Metrobank purchased the mortgaged properties from the sheriff of the same court for only P316,916.29. In debunking the argument that the amount tendered was insufficient, the RTC held:

It is contended for Metrobank that the redemption money deposited by Juan C. Teoco, Jr., is insufficient and ineffective because the spouses Ramon Co and Lydia T. Co owe it the total amount of P6,856,125 excluding interest and other charges and the mortgage contract executed by them in favor of Metrobank in 1985 and 1986 (Exh. A and B) are not only security for payment of their obligation in the amount of P200,000 but also for those obligations that may have been previously and later extended to the Co couple including interest and other charges as appears in the accounts, books and records of the bank.

Metrobank cites the case of *Mojica v. Court of Appeals*, 201 SCRA 517 (1991) where the Supreme Court held that mortgages given to secure future advancements are valid and legal contracts; that the amounts named as consideration in said contract do not limit the amount for which the mortgage may stand as security; that a mortgage given to secure the advancements is a continuing security and is not discharged by repayment of the amount named in the mortgage until the full amount of the advancements are paid. In the opinion of this court, it is not fair and just to apply this rule to the case at bar. There is no evidence offered by Metrobank that these other obligations of Ramon Co and his wife were not secured by real estate mortgages of other lands. If the other indebtedness of the Co couple to Metrobank are secured by a mortgage on their other lands or properties the obligation can be enforced by foreclosure which the court assumes Metrobank has already done. There is no proof that Metrobank asked for a deficiency judgment for these unpaid loans.

The Supreme Court in the *Mojica* case was dealing with the rights of the mortgagee under a mortgage from an owner of the land. It determined the security covered by the mortgage the intention of the parties and the equities of the case. What was held in that case was hedged about so as to limit the decision to the particular facts. It must be apparent that the *Mojica* ruling cannot be construed to give countenance or approval to the theory that in all cases without exception mortgages given to secure past and future advancements are valid and legal contracts.

In construing a contract between the bank and a borrower such a construction as would be more favorable to the borrower should be adopted since the alleged past and future indebtedness of Ramon Co to the bank was not described and specified therein and that the addendum was made because the mortgage given therefore were not sufficient or that these past and future advancements were unsecured. That being the

case the mortgage contracts, Exh. A and B should be interpreted against Metrobank which drew said contracts. A written contract should, in case of doubt, be interpreted against the party who has drawn the contract (6 R.C.L. 854; *H.E. Heackock Co. vs. Macondray & Co.*, 42 Phil. 205). Here, the mortgage contracts are in printed form prepared by Metrobank and therefore ambiguities therein should be construed against the party causing it (*Yatco vs. El Hogar Filipino*, 67 Phil. 610; *Hodges vs. Tazaro*, CA, 57 O.G. 6970).^[5]

The RTC added that there is another reason for dismissing Metrobank's petition: the RTC failed to acquire jurisdiction over the spouses Co. The RTC noted that Metrobank published its petition for writ of possession, but did not publish the writ of summons issued by said court on February 16, 1994. According to the RTC:

A petition for a writ of possession of foreclosed property is in reality a possession suit. That Metrobank prayed for a writ of possession in an independent special proceeding does not alter the nature of the case as a possessory suit (*Cabrera v. Sinoy*, L.-12648, 23 November 1959).

The defendant or owner of the property foreclosed by the petitioner should be summoned to answer the petition. Accordingly, the publication made by the petitioner is fatally flawed and defective and on that basis alone this court acquired no jurisdiction over the person of respondents Ramon Co and his wife (*Mapa vs. Court of Appeals*, G.R. No. 79394, October 2, 1992; *Lopez vs. Philippine National Bank*, L-34223, December 10, 1982).^[6]

Metrobank appealed to the CA. In its appeal, Metrobank claimed that the RTC erred in finding that the publication made by it is fatally flawed, and that the brothers Teoco had effectively redeemed the properties in question.

CA Disposition

On February 20, 2004, the CA decided the appeal in favor of Metrobank, with the following disposition:

WHEREFORE, the appeal is hereby GRANTED. The assailed Decision dated July 22, 1997 rendered by the Regional Trial Court of Catbalogan, Samar Branch 29 in Cadastral Record No. 1378 is hereby ANNULLED and SET ASIDE. Accordingly, let a writ of possession in favor of petitioner-appellant METROPOLITAN BANK AND TRUST COMPANY be issued over the properties and improvements covered by Transfer Certificates of Title Nos. T-8492 and T-8493 of the Registry of Deeds of Western Samar.

SO ORDERED.^[7]

As regards the question of jurisdiction, the CA ruled that since the parcels of land in question were already registered in the name of Metrobank at the time the petition was filed, and since the certificates of title of the spouses Co were already cancelled, there is no more need to issue summons to the spouses Co. The CA noted that the best proof of ownership of the parcel of land is a certificate of title.^[8]

The CA also held that the issue of the validity of summons to the spouses Co is unimportant considering that the properties in question were mortgaged to Metrobank and were subsequently sold to the same bank after the spouses Co failed to satisfy the principal obligation. Hence, the applicable law is Act No. 3135,^[9] as amended by Act No. 4118. Section 7 of said Act No. 3135 states that a petition for the issuance of a writ of possession filed by the purchaser of a property in an extrajudicial foreclosure sale may be done *ex parte*. It is the ministerial duty of the trial court to grant such writ of possession. No discretion is left to the trial court. Any question regarding the cancellation of the writ, or with respect to the validity and regularity of the public sale should be determined in a subsequent proceeding as outlined in Section 9 of Act No. 3135.^[10]

Further, the CA held that the brothers Teoco were not able to effectively redeem the subject properties, because the amount tendered was insufficient, and the brothers Teoco have not sufficiently shown that the spouses Co's right of redemption was properly transferred to them.

Issues

In this Rule 45 petition, the brothers Teoco impute to the CA the following errors:

I

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR OF JUDGMENT IN HOLDING THAT PETITIONERS FAILED TO REDEEM THE SUBJECT PROPERTIES WITHIN THE REGLEMENTARY PERIOD OF ONE YEAR AND THAT THE REDEMPTION PRICE TENDERED IS INSUFFICIENT.

II

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR OF JUDGMENT IN HOLDING PETITIONERS TO PAY NOT ONLY THE P200,000 PRINCIPAL OBLIGATION BUT ALSO THAT PREVIOUSLY EXTENDED, WHETHER DIRECT OR INDIRECT, PRINCIPAL OR SECONDARY AS APPEARS IN THE ACCOUNTS, BOOKS AND RECORDS.

III

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE PETITIONERS HAVE NOT SUFFICIENTLY SHOW(N) THAT THE RIGHT OF REDEMPTION WAS PROPERLY TRANSFERRED TO THEM.

IV

THE HONORABLE COURT OF APPEALS ERRED IN REVERSING THE DECISION OF THE REGIONAL TRIAL COURT, BRANCH 29, AND GRANTING THE WRIT OF POSSESSION TO THE RESPONDENT.^[11] (Underscoring supplied)

Our Ruling

Sufficiency of Amount Tendered