

SECOND DIVISION

[G.R. NO. 163902, January 27, 2006]

**CASENT REALTY & DEVELOPMENT CORPORATION, PETITIONER,
VS. PREMIERE DEVELOPMENT BANK, RESPONDENT.**

DECISION

PUNO, J.:

This is a Petition for *Certiorari* under Rule 45 of the Rules of Court assailing the decision of the Third Division of the Court of Appeals in CA-G.R. SP No. 80245 dated February 27, 2004, and its resolution dated May 25, 2004.

First, a brief overview of the facts.

On December 28, 1994, petitioner Casent Realty & Development Corporation (Casent Realty) obtained from respondent Premiere Development Bank (Premiere Bank) a commercial loan of Php40,000,000.00 secured by Promissory Note No. 235-Z and a real estate mortgage over a parcel of land covered by Transfer Certificate of Title No. 136244 of the Register of Deeds of Makati City. As the terms of the loan allowed Casent Realty to make balloon payments on the principal prior to its due date without pre-termination, it paid Php10,740,000.00 of the principal on August 24, 1995. This payment reduced the principal obligation to Php29,260,000.00. All other payments made by Casent Realty were applied to interest, penalties and other charges. To update interest payments on the said loan, two more commercial loans were obtained by Casent Realty in the amounts of Php7,860,000.00 and Php2,709,556.16, secured by Promissory Note Nos. 372-Z and 374-X, respectively, and by the same real estate mortgage over Transfer Certificate of Title No. 136244.

[1]

In January 2001, Premiere Bank sent demand letters to Casent Realty involving the loans covered by Promissory Note Nos. 372-Z and 235-Z. In its desire to cut costs, Casent Realty decided to prepay its remaining obligations under Promissory Note No. 235-Z by selling some of its real properties not subject of the real estate mortgage. In addition, Casent Realty proposed a *dacion en pago* settlement. On several occasions, from March 2001 to July 2001, representatives of Casent Realty and Premiere Bank met in connection with the proposed settlement. In the course of the negotiations, Casent Realty sent letters to Premiere Bank asking for reconciliation of the application of payments over the loans.[2]

On August 2, 2001, Premiere Bank sent a letter to Casent Realty stating that the properties proposed by the latter for the *dacion en pago* were not acceptable. It further stated that, unless sufficient payment was made or a settlement be forged, it would file foreclosure proceedings against Casent Realty's collateral. In the same letter, Premiere Bank welcomed Casent Realty's request for a reconciliation of the outstanding balance of its loans.[3]

On August 28, 2001, Premiere Bank filed an application for extrajudicial foreclosure against the real estate mortgage executed by Casent Realty over the loans covered by Promissory Note Nos. 235-Z, 372-Z, and 374-X. In this connection, a Notice of Sheriff's Sale dated September 3, 2001 was issued setting the sale at public auction on October 17, 2001.^[4]

Thus, on October 4, 2001, Casent Realty filed a complaint against Premiere Bank for injunction and damages with prayer for preliminary injunction, temporary restraining order and accounting docketed as Civil Case No. 01-1477 with Branch 60 of the Regional Trial Court of Makati. After receipt of the summons and the copy of the complaint, Premiere Bank filed its answer with counterclaim.^[5]

On October 15, 2001, the Regional Trial Court issued a temporary restraining order against the scheduled foreclosure proceeding. Afterwards, the court granted Casent Realty's prayer for preliminary injunction on February 27, 2002. It ruled that Premiere Bank's resort to foreclosure was premature due to the uncertainty of the actual amount of Casent Realty's unpaid obligation. Premiere Bank's motion for reconsideration was likewise denied.^[6]

During the pre-trial conference on March 14, 2003, Premiere Bank rejected the amount offered by Casent Realty as settlement. At the next conference held on April 23, 2003, Premiere Bank manifested that it prepared a rough computation of the amount due based on a 15% annual interest rate after waiving all penalties. As Casent Realty disputed the accuracy of Premiere Bank's computation, the Regional Trial Court suggested that this be reviewed by an independent auditor. Both parties agreed to the procedure and each of the parties was ordered to submit a list of three independent accounting firms. From this list, the court chose Sycip Gorres Velayo and Co. as independent auditor. Thereafter, Casent Realty filed a Very Urgent Motion for Clarification on June 10, 2003 contending that the independent auditors could not conduct a review of Premiere Bank's computations to determine whether these were in compliance with banking standards and regulations as this would involve a pronouncement on the merits of the case. As an alternative, it proposed that the function of the independent auditors be limited to a historical review of the payments made and to determining whether the payments were applied properly.^[7] The prayer of Casent Realty's motion reads, viz.:

WHEREFORE, it is most respectfully prayed that the functions of the independent auditor appointed by the Honorable Court as stated in the Order dated 26 May 2003 be clarified to refer merely to making a historical review of the payments made by plaintiff Casent Realty and the application thereof by defendant Premiere Bank, for the sole purpose of assisting the parties for a possible compromise agreement, without making any determination on matters affecting the merits of the instant case.

Other reliefs just and equitable are likewise prayed for.^[8]
(Emphasis supplied)

A little over a month later or on July 21, 2003, the Regional Trial Court denied Casent Realty's Very Urgent Motion for Clarification but allowed it to file a

manifestation that it was uninterested in having independent auditors assist the parties in arriving at an amicable settlement of the case so that pre-trial would proceed. The pertinent portions of the order are reproduced below:

[T]he issue before us is whether or not the independent auditor's task contemplates a review of the computation that would lead to the resolution of the issues in this case.

The court is of the belief that the independent auditor may undertake such a task but since the plaintiff apparently does not agree with the court, and the independent auditor is only being called in to assist the parties in arriving at a settlement and the court cannot compel the parties to agree to a settlement then necessarily, it cannot compel them to accept the assistance of the independent auditor whose task would have been to assist them on this matter.

In any case, the defendant was advised that in lieu of utilizing the independent auditor now, it may choose to utilize them when it is its turn to present evidence by filing the proper motion to have the issues subject of this case referred to a commissioner for resolution.

As for the plaintiff, considering that its counsel has manifested that it needs to be given time to consider the matters raised in the Order, it is given five days from today to file the said manifestation and the defendant is given the same period from receipt thereof to file its own counter manifestation.

In the event the plaintiff decides to proceed with the pre-trial without utilizing the independent auditor, set the pre-trial of this case once again to Wednesday, August 13, 2003 at 10:00 in the morning.

SO ORDERED.^[9]

Premiere Bank filed a Motion for Reconsideration of the order on July 24, 2003. It claimed that the relief granted was not within the scope of Casent Realty's motion for clarification as it merely questioned the extent of the independent auditors' functions.^[10] On September 1, 2003, the Regional Trial Court denied Premiere Bank's motion for reconsideration on the ground that it could not compel the parties to arrive at an amicable settlement and accept the assistance of the independent auditor. [11]

From this denial, Premiere Bank filed a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure with the Court of Appeals dated October 28, 2003. The petition was docketed as C.A.-G.R. SP No. 80245 and raffled to the Third Division of the appellate court. In its petition, Premiere Bank contended that the Regional Trial Court acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing its order dated July 21, 2003.^[12]

On February 27, 2004, the Third Division of the Court of Appeals granted the petition. Though the appellate court agreed that it could not compel the parties to arrive at an amicable settlement, it deemed this principle inapplicable. Instead, the appellate court applied Rule 32 of the 1997 Rules of Civil Procedure and ruled that