

THIRD DIVISION

[G.R. NO. 138567, March 04, 2005]

**DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER VS.
SPOUSES WILFREDO GATAL AND AZUCENA GATAL,
RESPONDENTS.**

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

Before us for resolution is the petition for review on *certiorari*^[1] assailing the Decision^[2] dated January 18, 1999 of the Court of Appeals and its Resolution^[3] dated April 27, 1999 in CA-G.R. SP No. 47736, "*Development Bank of the Philippines, petitioner, vs. Hon. Raineldo T. Son, in his capacity as Presiding Judge of Branch 47, Regional Trial Court of Tagbilaran City, and Spouses Wilfredo Gatal and Azucena Gatal, respondents.*"

Records show that sometime in 1993, spouses Wilfredo and Azucena Gatal, respondents, obtained a loan of P1,500,000.00 from the Development Bank of the Philippines (DBP), petitioner. The loan was secured by a real estate mortgage over a commercial lot at No. 3 J.A. Clarin Street, Tagbilaran City, covered by Transfer Certificate of Title No. T-22697 of the Registry of Deeds, same city. For failure of respondents to pay their loan, petitioner foreclosed the mortgage in December 1994. In January 1996, the title of the lot was **consolidated** in the name of petitioner DBP.

On October 29, 1996, the property was offered for sale at public auction, but none of the bidders was able to meet the bid price ceiling.

On November 18, 1996, petitioner offered the property for negotiated sale on condition that the buyer must pay 20% of the selling price as down payment, the balance payable under the terms of the interested buyer.

Respondents then submitted their bid in the amount of P2,160,000.00 and made a deposit equivalent to 10% of the bid price. However, another buyer, Jimmy Torrefranca, offered a bid of P2,300,000.00, or P140,000.00 higher than respondents' bid. Upon learning of Torrefranca's offer, respondents wrote^[4] petitioner requesting that they will match his bid. But petitioner rejected respondents' request because Torrefranca was already declared the preferred bidder.^[5]

Aggrieved, respondents, filed with the Regional Trial Court (RTC), **Branch 4**, Tagbilaran City a complaint for injunction with prayer for a temporary restraining order and a preliminary injunction, docketed as **Civil Case No. 5996**. The action sought to (a) declare the sale of the property to Torrefranca void and uphold respondents' right of pre-emption; and (b) maintain the *status quo* between the

parties prior to the filing of the suit.

On February 22, 1997, the RTC issued an Order granting respondents' application for a preliminary injunction.

Meantime, on August 27, 1997, petitioner filed with the same RTC, **Branch 47**, a petition for issuance of a writ of possession, docketed as **Civil Case No. 6097**. On October 31, 1997, the court issued a writ of possession in favor of petitioner.

On November 12, 1997, respondents filed with Branch 47 a motion to dismiss Civil Case No. 6097 and a motion to quash the writ of possession on the ground that there is another case (Civil Case No. 5996 for injunction) pending before Branch 4 involving the same parties, the same subject matter and the same legal issues.

On December 18, 1997, Branch 47 issued an Order dismissing Civil Case No. 6097 and recalling its earlier Order granting the writ of possession on the ground of *litis pendentia*.

Petitioner DBP filed a motion for reconsideration but was denied by Branch 47 in an Order dated February 10, 1998.

Thereafter, petitioner filed with the Court of Appeals a petition for *certiorari* assailing the Orders dated December 18, 1997 and February 10, 1998 of Branch 47, docketed as CA-G.R. SP No. 47736. On January 18, 1999, the Appellate Court rendered its Decision dismissing the petition, thus upholding the challenged Orders.

Petitioner filed a motion for reconsideration but was denied in a Resolution dated April 27, 1999.

Hence, the instant petition.

The fundamental issue for our resolution is whether the Court of Appeals committed a reversible error in holding that the trial court correctly dismissed Civil Case No. 6097 on the ground of *litis pendentia*.

The petition is meritorious.

One of the grounds for dismissing an action is when there is *litis pendentia* as provided under Section 1(e), Rule 16, of the 1997 Rules of Civil Procedure, as amended, thus:

"SECTION 1. *Grounds*. – Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

x x x

(e) That there is another action pending between the same parties for the same cause;

x x x."