

## FIRST DIVISION

[ G.R. No. 154129, July 08, 2005 ]

**TERESITA DIO, PETITIONER, VS. SPOUSES VIRGILIO AND LUZ  
ROCES JAPOR AND MARTA<sup>[1]</sup> JAPOR, RESPONDENTS.**

### DECISION

**QUISUMBING, J.:**

For review on certiorari is the **Decision**,<sup>[2]</sup> dated February 22, 2002, of the Court of Appeals, in the consolidated cases CA-G.R. CV No. 51521 and CA-G.R. SP No. 40457. The decretal portion read:

WHEREFORE, premises considered, in CA-G.R. CV No. 51521, the decision of the trial court is AFFIRMED with MODIFICATION. Judgment is rendered as follows:

1. Declaring the Real Estate Mortgage to be valid;
2. Fixing the interest at 12% per annum and an additional 1% penalty charge per month such that plaintiffs-appellants' contractual obligation under the deed of real estate mortgage would amount to P1,252,674.00;
3. Directing defendant-appellee Dio to give the surplus of P2,247,326.00 to plaintiffs-appellants; and
4. Affirming the dissolution of the writ of preliminary injunction previously issued by the trial court.

No pronouncement as to costs.

The Petition in CA-G.R. SP No. 40457 is DENIED for being moot and academic.

SO ORDERED.<sup>[3]</sup>

Equally assailed in this petition is the **Resolution**,<sup>[4]</sup> dated July 2, 2002, of the appellate court, denying Teresita Dio's **Motion for Partial Reconsideration** of March 19, 2002 and the Spouses Japor and Marta Japor's **Motion for Reconsideration** dated March 20, 2002.

The antecedent facts are as follows:

Herein respondents Spouses Virgilio Japor and Luz Roces Japor were the owners of an 845.5 square-meter residential lot including its improvements, situated in Barangay Ibabang Mayao, Lucena City, as shown by Transfer Certificate of Title

(TCT) No. T-39514. Adjacent to the Japor's lot is another lot owned by respondent Marta Japor, which consisted of 325.5 square meters and titled under TCT No. T-15018.

On August 23, 1982, the respondents obtained a loan of P90,000 from the Quezon Development Bank (QDB), and as security therefor, they mortgaged the lots covered by TCT Nos. T-39514 and T-15018 to QDB, as evidenced by a Deed of Real Estate Mortgage duly executed by and between the respondents and QDB.

On December 6, 1983, respondents and QDB amended the Deed of Real Estate Mortgage increasing respondents' loan to P128,000.

The respondents failed to pay their aforesaid loans. However, before the bank could foreclose on the mortgage, respondents, thru their broker, one Lucia G. Orian, offered to mortgage their properties to petitioner Teresita Dio. Petitioner prepared a Deed of Real Estate Mortgage, whereby respondents mortgaged anew the two properties already mortgaged with QDB to secure the timely payment of a P350,000 loan that respondents had from petitioner Dio. The Deed of Real Estate Mortgage, though dated January 1989, was actually executed on February 13, 1989 and notarized on February 17, 1989.

Under the terms of the deed, respondents agreed to pay the petitioner interest at the rate of five percent (5%) a month, within a period of two months or until April 14, 1989. In the event of default, an additional interest equivalent to five percent (5%) of the amount then due, for every month of delay, would be charged on them.

The respondents failed to settle their obligation to petitioner on April 14, 1989, the agreed deadline for settlement.

On August 27, 1991, petitioner made written demands upon the respondents to pay their debt.

Despite repeated demands, respondents did not pay, hence petitioner applied for extrajudicial foreclosure of the mortgage. The auction of the unredeemed properties was set for February 26, 1992.

Meanwhile, on February 24, 1992, respondents filed an action for **Fixing of Contractual Obligation with Prayer for Preliminary Mandatory Injunction/Restraining Order**, docketed as Civil Case No. 92-26, with the Regional Trial Court (RTC) of Lucena City. Respondents prayed that "judgment be rendered fixing the contractual obligations of plaintiffs with the defendant Dio plus legal or allowable interests thereon."<sup>[5]</sup>

The trial court issued an Order enjoining the auction sale of the aforementioned mortgaged properties.

On June 15, 1992, the Japors filed a **Motion to Admit Amended Complaint** with an attached copy of their **Amended Complaint** praying that the Deed of Real Estate Mortgage dated February 13, 1989 be declared null and void, but reiterating the plea that the trial court fix the contractual obligations of the Japors with Dio. The trial court denied the motion.

On September 27, 1994, respondents filed with the appellate court, a petition for certiorari, docketed as CA-G.R. SP No. 35315, praying that the Court of Appeals direct the trial court to admit their Amended Complaint. The appellate court denied said petition.<sup>[6]</sup>

On December 11, 1995, the trial court handed down the following judgment:

WHEREFORE, in view of the foregoing considerations, judgment is rendered:

1. Dismissing the complaint for failure of the plaintiffs to substantiate their affirmative allegations;
2. Declaring the Real Estate Mortgage (Exhs. "A" to "A-13"/Exhs. "3" to "3-D") to be valid and binding as between the parties, more particularly the plaintiffs Virgilio Japor, Luz Japor and Marta Japor or the latter's substituted heir or heirs, as the case may be;
3. Dissolving the writ of preliminary injunction previously issued by this Court; and
4. To pay the cost of this suit.

SO ORDERED.<sup>[7]</sup>

On January 17, 1996, respondents filed their notice of appeal. On April 26, 1996, they also filed a **Petition for Temporary Restraining Order And/Or Mandatory Injunction in Aid of Appellate Jurisdiction** with the Court of Appeals.

On May 8, 1996, petitioner Dio as the sole bidder in an auction purchased the properties for P3,500,000.

On May 9, 1996, the Court of Appeals denied respondents' application for a temporary restraining order.<sup>[8]</sup>

On October 9, 1996, the appellate court consolidated CA-G.R. CV No. 51521 and CA-G.R. SP No. 40457.

As stated at the outset, the appellate court affirmed the decision of the trial court with respect to the validity of the Deed of Real Estate Mortgage, but modified the interest and penalty rates for being unconscionable and exorbitant.

Before us, petitioner assigns the following errors allegedly committed by the appellate court:

## I

THE ALLEGED INIQUITY OF THE STIPULATED INTEREST AND PENALTY WAS NOT RAISED BEFORE THE TRIAL COURT NOR ASSIGNED AS AN ERROR IN RESPONDENTS' APPEAL.

## II