

## THIRD DIVISION

[ G.R. No. 113665, October 07, 2004 ]

**SPOUSES REMEDIOS DIJAMCO AND TEODORO DIJAMCO,  
PETITIONERS, VS. COURT OF APPEALS AND PREMIERE  
DEVELOPMENT BANK RESPONDENTS.**

### D E C I S I O N

**CORONA, J.:**

This is a petition for review<sup>[1]</sup> of the January 7, 1994 resolution and March 30, 1993 decision<sup>[2]</sup> of the Court of Appeals in CA G.R. CV No. 34125, affirming the February 27, 1991 decision<sup>[3]</sup> of the Regional Trial Court, Branch 109, Pasay City in Civil Case No. 5795, which dismissed petitioners' complaint against private respondent Premiere Development Bank for recovery of real property and damages.

This dispute arose from the following facts, as summarized by the RTC and the CA:

It appears on record that plaintiffs were granted four separate loans by defendant bank, as follows: Industrial Loan No. 1833 in the amount of P75,000.00 granted on April, 1976; Industrial loan No. 2985 in the amount of P80,000.00 granted on March, 1980; Real Estate Loan No. 2084 in the amount of P80,000.00 granted on February, 1986 and Real Estate Loan No. 64 in the amount of P210,000.00 granted on October, 1981. The subject of this complaint pertains to the fourth loan or the Real Estate Loan No. 2084. To secure the payment of the fourth loan, plaintiffs executed a real estate mortgage over a parcel of land located in Pasay City covered by TCT No. 34450 which according to plaintiffs has an improvement thereon a five-door apartment.

Due to severe economic reverses, plaintiffs failed to remit monthly amortizations regularly on the fourth loan. It appears that plaintiffs were not only in arrears on the fourth loan but also on the second and third loans, as well. At the time that the plaintiffs were negotiating for the settlement of the second and third loans, the fourth loan was about ten (10) months in arrears. Because of this predicament, plaintiffs approached Atty. Araos, Vice President of defendant bank and a family friend of the Dijamcos. According to the plaintiffs, Atty. Araos "*advised them to first settle all the two smaller loans (the second and third loans) and not to worry about the P210,000.00 loan*" (par. 6, page 2, Amended Complaint). On the other hand, defendant bank alleges that it was plaintiff's (*sic*) scheme to pay off the second and third loans first so that they (plaintiffs) would then use the collateral of these loans in securing a loan from another which proceeds they would then use to pay off the fourth loan, but this plaintiffs failed to do despite the cooperation of defendant bank.

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On March 6, 1983, defendant bank sought the assistance of the City Sheriff of Pasay City regarding defendant bank's Petition for Extrajudicial Foreclosure of Mortgage under Act 3135 against spouses Remedios R. Dijamco and Teodoro S. Dijamco (See Exh. 4), stating therein among other things that the mortgagors, herein plaintiffs, have violated the provisions of the mortgage contract executed in favor of the defendant bank and that the mortgagee bank is now entitled to foreclose the same. On September 6, 1983, Deputy Sheriff Umberto Ramos for and in behalf of the *Ex-Officio* Sheriff of Pasay City issued a Notice of Sheriffs' sale (Exh. 5) stating therein that a sheriff's sale shall be conducted on October 6, 1983 by virtue of the power of attorney inserted in the Deed of Real Estate Mortgage and upon the verified petition of the mortgagee in accordance with the provisions of Act 4118. However, the sheriff's sale was not held as previously scheduled due to the request for postponement filed by herein plaintiffs dated October 4, 1983 (Exh. 6). Plaintiffs requested for five successive postponements in separate requests, to wit Nov. 4, 1983 (Exh. 7); Dec. 7, 1983 (Exh. 8); Jan. 5, 1984 (Exh. 9); and Feb. 4, 1984 (Exh. 10).

On March 7, 1984, the Office of the Ex-Officio Sheriff of Pasay City issued a Certificate of Sale of even date (Exh. 11), stating therein that the mortgaged property covered by TCT 34450 was sold in public auction on said date, with defendant bank as the highest bidder for the price of P359,881.80.

X X X                      X X X                      X X X

...plaintiffs failed to redeem the property within the redemption period.

In a letter dated June 11, 1986 (Exh. 14) addressed to Dr. Procopio C. Reyes, President of defendant bank, plaintiff Remedios Dijamco offered to repurchase the subject property, the pertinent and most important contents of which is hereinbelow reproduced and underlined, as follows:

" X X X.

We have sought ways and means to repurchase the subject property from you up to this time we are unable to do so. However, **we could pay interest monthly, just so the principal of P622,095.00 as of May 30, 1986 will no longer be increased.** In connection therewith **we wish to repurchase our foreclosed properties within a year's time** and are submitting the following plan of payment for your approval:

Repurchase price as of May 30, 1986 - P622,095.00

Interest of 26% PA to be paid monthly - P13,478.00

Grace period requested to repurchase the subject properties is one (1) year from May 30, 1986 or until May 30, 1987.

CONDITIONS:

1. Interest of P13,478.73 shall be paid on a monthly basis starting June 30, 1986 and every 30<sup>th</sup> day of every month until May 30, 1987.
2. **Failure to remit interest payment when the same is due will render this proposal automatically revoked without need of formal demand, and you may immediately enforce your Writ of Possession.**
3. That in case of failure to repurchase the subject property within the period above mentioned, **all interest and other payment made by us shall be treated as rentals for the use of the property.**

We shall appreciate your favorable action on the matter.

Very truly yours,

Signed  
REMEDIOS R. DIJAMCO

CONFORME:  
Premiere Development Bank  
By:  
Signed Procopio C. Reyes  
Authorized Signatory"

x x x x x x x x

In compliance with the letter-agreement dated June 11, 1986 (Exh. 14), plaintiffs paid defendant bank six (6) monthly remittances in the amount of P13,478.73 or a total of P80,872.38. According to the plaintiffs, the payment was discontinued by the plaintiffs when Atty. Araos informed plaintiffs that "none of the amount will be deducted from the purchase price x x x" (Par. 17, Amended Complaint). ([RTC] Decision, pp. 1-7; Records, pp. 446-452) (Emphasis and underscoring supplied).<sup>[4]</sup>

In accordance with the June 11, 1986 agreement, petitioners remitted monthly interest for six months, until January 1987, after which petitioners stopped paying and sued respondent Premiere Development Bank on May 13, 1988. They claimed that the latter employed fraud and undue advantage in depriving them of their property and prayed for recovery of said property for P350,000 and damages. The RTC dismissed the complaint for utter lack of merit and the CA affirmed such dismissal.

Hence, this appeal.

We hold that the RTC and the CA were correct in dismissing petitioners' complaint.