

SECOND DIVISION

[G.R. No. 137916, December 08, 2004]

**DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS.
COURT OF APPEALS, ELPIDIO O. CUCIO, SPOUSES JACINTO
GOTANGCO AND CHARITY BANTUG,^[1] RESPONDENTS.**

D E C I S I O N

CALLEJO, SR., J.:

This is a petition for review on certiorari of the Decision^[2] of the Court of Appeals (CA) in CA-G.R. CV No. 37873 which affirmed, with modification, the Decision^[3] of the Regional Trial Court (RTC) of Palayan City, Branch 40, in Civil Case No. 0061-P.

The Spouses Jacinto Gotangco and Charity Bantug were the owners of seven parcels of land located in Palayan City, with a total area of 21,000 square meters, covered by Transfer Certificates of Title (TCT) Nos. NT-166092 to NT-166098. The Spouses Gotangco were also the awardees of a parcel of land, identified as Lot No. 168, NG-130 (Pls-378), located in Canaderia, Palayan City, per Order of the Director of the Bureau of Lands dated February 22, 1961. The Spouses Gotangco declared Lot No. 168 for taxation purposes under Tax Declaration (TD) No. 0502 in 1980.

On August 22, 1980, the Spouses Gotangco secured a loan for their poultry project in Palayan City from the Development Bank of the Philippines (DBP) in the amount of P121,400.00. They then executed a real estate mortgage over the parcels of land.

^[4]

On December 16, 1981, the Spouses Gotangco executed a Deed of Undertaking^[5] wherein they obliged themselves to secure a sales patent in their favor from the Bureau of Lands over Lot No. 168 covered by TD No. 0502 within two (2) years from the execution thereof. They also undertook to deliver to the DBP the owner's duplicate of the certificate of title over the property for the annotation of the real estate mortgage in favor of DBP at the dorsal portion thereof.^[6]

On July 17, 1982, the Spouses Gotangco, as vendors, executed in favor of Elpidio O. Cudio a contract to sell over the seven parcels of land mortgaged to DBP for P50,000.00, payable in two installments. The parties agreed that the said amount shall be paid directly to DBP and applied to the mortgage indebtedness of the Spouses Gotangco and that, upon full payment of the purchase price, the Spouses shall execute a deed of sale over the said parcels of land in favor of Cudio.^[7] The contract to sell was known to DBP.

Thereafter, Cudio made the following remittances to DBP in payment of the purchase price of the seven parcels of land: (a) P16,000.00 per Official Receipt (OR) No. 2418258 dated January 13, 1983; and (b) P5,000.00. The DBP considered the

remittances as deposits and issued OR No. 2792644 dated February 18, 1983 to Cucio for the total amount of P21,000.00. The DBP informed Jacinto Gotangco, on February 18, 1983, of the said remittances made by Cucio.^[8] It also requested the Spouses Gotangco to turn over the owner's copy of the title over the property covered by TD No. 0502 so that it could effect the substitution of the seven (7) parcels of land mortgaged by the Spouses Gotangco for the said lot.

Subsequently, the Spouses Gotangco were able to secure a sales patent over the parcel of land covered by TD No. 0502, on the basis of which TCT No. NT-177647 was issued by the Register of Deeds on March 23, 1983. Conformably to the request of DBP, the Spouses Gotangco turned over the owner's duplicate of TCT No. NT-177647, and the mortgage executed in favor of DBP was duly annotated at the back of the said title. DBP kept the owner's copies of TCT Nos. NT-166092 to NT-166098 and TCT No. NT-177647.

On July 23, 1983, Jacinto Gotangco remitted the total amount of P57,097.36 to DBP in partial payment of his loan account for which DBP issued OR Nos. 324501 to 324504.^[9] In 1984, Cucio paid the balance of the purchase price of the seven parcels of land to DBP.

In the meantime, the Spouses Gotangco applied for a restructuring of their loan with the DBP which was, thereafter, approved. In a Letter dated October 14, 1983, the DBP informed Cucio of the approval of the restructuring of the loan of the Spouses Gotangco and requested him to complete the downpayment of the purchase price of the seven (7) parcels of land so that the appropriate substitution of the property covered by TCT No. NT-177647, in lieu of the seven (7) other properties issued by the said Spouses as collateral for their loan, could be effected, and the appropriate deed of absolute sale over TCT Nos. NT-166092 to NT-166098 could then be executed by the said Spouses in favor of Cucio.^[10] As such, Cucio paid the balance of the purchase price of the said lots to DBP on October 1, 1984.^[11]

On July 3, 1988, the poultry farm of the Spouses Gotangco and the improvements thereon were gutted by fire.

On December 6, 1988, the DBP Pool of Accredited Insurance Companies informed the DBP that it had offered to settle the claim of the Spouses Gotangco for the proceeds of the insurance on their poultry farm for P167,149.14.^[12] The Spouses apparently did not respond.

On February 20, 1989, the DBP wrote the Spouses Gotangco demanding payment of the balance of their loan in the amount of P408,026.96 within ten (10) days from notice thereof. However, the Spouses failed to respond or pay their account with the DBP.

By September 30, 1989, the outstanding account of the Spouses Gotangco on the DBP or the principal of their loan account amounted to P246,183.74.^[13] The DBP then wrote the Spouses Gotangco reminding them that their loan would mature on June 30, 1991.

Cucio then filed a complaint against the Spouses Gotangco and the DBP with the RTC of Palayan City for injunction and damages. Cucio alleged, *inter alia*, that

despite his payment of the full purchase price of the seven (7) parcels of land covered by TCT Nos. NT-166092 to NT-166098 and his demands for the turnover of the owner's duplicates of the said title to the Spouses Gotangco, the DBP refused to do so. He further alleged that the DBP even demanded the payment of the interest on the loan account of the Spouses Gotangco. Furthermore, the Spouses Gotangco refused to execute a deed of absolute sale of the said parcels of land in his favor. Cudio prayed that, after due proceedings, judgment be rendered in his favor, thus:

WHEREFORE, it is respectfully prayed that a Writ of Preliminary Mandatory Injunction be issued ordering defendants Jacinto Gotangco and Charity Bantug to execute the final Deed of Sale over TCT Nos. NT-166092, NT-166093, NT-166094, NT-166095, NT-166096, NT-166097 and NT-166098 and to submit additional collaterals to the Development Bank of the Philippines (DBP) and the DBP to release the owner's copies of said titles from its possession and deliver them to plaintiff.

After hearing, making the preliminary injunction permanent and ordering the defendants, jointly and severally, to pay plaintiff moral damages, the amount of which is left to the sound discretion of the Honorable Court; actual damages of P50,000.00; attorney's fee of P30,000.00 and the cost of the suit.

Plaintiff prays for other remedies under the premises.^[14]

The Spouses Gotangco filed their answer^[15] with counterclaim, alleging that they could not be faulted for their failure to execute a deed of sale in favor of Cudio over the said parcels of land because the latter did not notify them that he had already made the complete payment of the P50,000.00 purchase price thereof to DBP. According to the Spouses Gotangco, considering that the DBP had given its implied consent to the contract to sell over the subject parcels of land, it was the DBP's obligation to release the titles after complete payment was made, following the submission to it of TCT No. NT-177647, the substitute collateral for their loan.

In their cross-claim against the DBP, the Spouses Gotangco alleged the following:

24. That on account of non-approval of loan and non-release of collaterals/securities by the DBP, the defendants Gotangcos were unnecessarily dragged into litigation by the plaintiff where the DBP alone should have been sued in the first place, for all these, the DBP alone should suffer if ever the Spouses Gotangco will be adjudged liable to the plaintiff; for all the damages.^[16]

The Spouses Gotangco prayed that, after due proceedings, judgment be rendered in their favor, thus:

WHEREFORE, facts and premises considered, it is most respectfully prayed that JUDGMENT BE RENDERED:

1. DISMISSING THE COMPLAINT for lack of cause of action and other grounds stated in the Special and Affirmative Defenses;

2. ON COUNTERCLAIM, condemning the plaintiff to pay moral damages of P100,000.00, attorney's fees of P25,000.00, more or less, and litigation expenses of P10,000.00;
3. By way of cross-claim, ordering the other defendant DBP to pay whatever amount the defendants Gotangcos may suffer in the event they may be adjudged liable to the plaintiff.

GRANTING UNTO THE DEFENDANTS SPOUSES GOTANGCO reliefs and other remedies just and proper under the premises and the law.^[17]

In its answer,^[18] the DBP admitted that it charged Cucio interest on the Spouses Gotangco's loan; however, it denied that it consented to the transaction between the Spouses Gotangco relative to the seven (7) parcels of land claimed by Cucio. In its answer to the cross-claim,^[19] the DBP, likewise, admitted receiving the P50,000.00 purchase price of the seven parcels of land from Cucio but only as deposit, and agreeing verbally to the release of the properties, but only after the Spouses Gotangco shall have fulfilled the conditions set forth in the real estate mortgage. It further alleged that the Spouses Gotangco failed to comply with the said conditions, and that their account remained dormant; hence, it refused to release the owner's duplicate copies of the titles of the properties to the Spouses Gotangco.

While the case was pending, the DBP informed the Spouses Gotangco in a Letter dated February 20, 1990^[20] that it was going to have the mortgage foreclosed for their failure to settle their account. Jacinto Gotangco arrived at the Cabanatuan branch office of the DBP to ascertain the balance of his bank account but received no satisfactory answer. But the DBP sent a letter^[21] to the Spouses Gotangco on May 24, 1990, warning them anew that it would institute foreclosure proceedings for their failure to fulfill their loan obligations which already amounted to P737,474.33 as of April 30, 1990. On June 8, 1990, the Spouses Gotangco wrote the DBP requesting for an updated statement of their account and the application of their payments, inclusive of the proceeds of their insurance claims.^[22]

On the same date, the DBP filed an application for the extrajudicial foreclosure of the real estate mortgage executed in its favor by the Spouses Gotangco.^[23] Appended to the application was a statement of account of the Spouses. On June 7, 1990, Deputy Sheriff Rubentito Elonia issued a Notice of Sale set on June 28, 1990 to satisfy the obligation of the Spouses Gotangco to the DBP.^[24]

The Spouses Gotangco wrote DBP anew, on June 14, 1990, protesting the foreclosure, claiming that they owed DBP only the amount of P246,183.74 as of October 31, 1988.^[25] However, the DBP was undaunted.

The Spouses Gotangco forthwith filed a petition before the trial court for a writ of preliminary injunction^[26] to enjoin the public auction, alleging that the extrajudicial foreclosure of the real estate in favor of the DBP would render the decision of the court on the merits moot and academic.^[27]

The DBP opposed the motion, contending that the balance of the account of the Spouses Gotangco as of April 30, 1990 was P737,474.33, exclusive of interests and expenses.^[28]

The trial court issued a Temporary Restraining Order dated June 26, 1990. After due hearing, the trial court issued an Order on October 4, 1990, granting the petition of the Spouses Gotangco for a writ of preliminary injunction on a bond of P50,000.00 pending the resolution of the matters raised in the main case.^[29] A writ of preliminary injunction was issued by the trial court after the Spouses Gotangco posted a bond of P50,000.00. Consequently, the writ was issued on November 12, 1990.^[30]

The trial court issued a subpoena *duces tecum* to the cashier of the DBP in Cabanatuan City for the production of the Spouses Gotangco's bank records reflecting the balance of their account. However, the cashier failed to comply.^[31] During the trial, Jacinto Gotangco testified that he suffered mental anguish and serious anxieties because of the threatened extrajudicial foreclosure of the real estate mortgage in favor of DBP. Charity Gotangco failed to testify. The Spouses also adduced in evidence the statement of their account from the DBP.^[32]

On February 8, 1992, Jacinto Gotangco died intestate and was survived by his wife Charity Bantug Gotangco and their children, Jovina Ann Gotangco, Jaime Gotangco and Jacinto B. Gotangco, Jr.^[33]

On April 14, 1992, the RTC rendered judgment as follows:

WHEREFORE, judgment is hereby rendered:

(1) Ordering DBP to release the owner's duplicate certificates of TCT Nos. NT-166092 to NT-166098 to the Gotangcos;

(2) Declaring the owner's duplicate certificate TCT No. NT-177647 in the name of the Gotangcos as a replacement thereof as their collateral to their restructured loan with DBP;

(3) Ordering the Gotangcos to, thereafter, execute a deed of absolute sale covering the properties described in TCT Nos. NT-166092 to NT-166098 in favor of Cucio;

(4) Declaring the writ of preliminary injunction issued on November 12, 1990, enjoining DBP from foreclosing the properties of the Gotangcos covered by TCT No. NT-166092 to NT-166098 and TCT No. NT-177647 and from the scheduled auction sale thereof permanent;

(5) Ordering DBP to pay the Gotangcos the sum of P250,000.00 as moral damages; and

(6) Ordering DBP to pay costs.^[34]

The trial court declared that the DBP was legally bound to release the Spouses Gotangco's owner's duplicate of the certificates of title over the seven (7) parcels of