

SECOND DIVISION

[G.R. No. 154489, July 25, 2003]

**FAR EAST BANK AND TRUST COMPANY (FEBTC) AND/OR BANK
OF THE PHILIPPINE ISLANDS, PETITIONERS, VS. SPOUSES
ROMULO PLAZA AND WILMA PLAZA, RESPONDENTS.**

DECISION

BELLOSILLO, J.:

One Charlie Ang obtained from petitioners a loan of P2,158,000.00 using as collateral a piece of land owned by respondent-spouses; hence the mortgage to petitioners. Ang later obtained more loans from petitioners covered by promissory notes amounting to P4,800,000.00. When Ang failed to pay the loans upon maturity, petitioners started proceedings to foreclose the mortgage. Respondent-spouses offered to pay the mortgage indebtedness of P2,158,000.00 but petitioners refused to accept payment unless respondents assumed the other obligations of Ang with petitioners.

Respondents filed a civil action against petitioner banks and Charlie Ang for release of the real estate mortgage and damages with prayer for temporary restraining order and issuance of writ of injunction. Petitioners filed a motion to dismiss the complaint on the ground of lack of jurisdiction for non-payment of docket fees. Petitioners alleged that the action to enjoin foreclosure of mortgage was a real action and there was no showing that the docket fees were paid based on the assessed or estimated value of the real property involved. The Regional Trial Court of Cebu City denied the Motion to Dismiss as well as petitioners' Motion for Reconsideration. Petitioners filed a petition for *certiorari* before the Court of Appeals. The appellate court dismissed the petition and petitioners' motion for reconsideration. Petitioners then filed this petition for review.

On 3 March 2003, the trial court issued a writ of preliminary injunction enjoining petitioners from foreclosing the mortgage while the case before it was pending. The trial court also denied petitioners' motion for reconsideration of the 3 March 2003 Order.

In the meantime, the civil case before the trial court proceeded to the pre-trial stage where petitioners expressed their willingness to await any written offer to pay by respondents. Respondents sent a formal letter to petitioners offering to pay the amount of P2,158,000.00 and asking the release of the real estate mortgage. They enclosed a cashier's check in the amount of P2,158,000.00. Petitioners accepted the check only as partial payment without prejudice to the remaining balance of the loans. Respondents now insist that they have already paid the loans in full and that petitioners should release the mortgage in view of the payment.

Petitioners maintain that the civil action filed by respondents for the release of the