

THIRD DIVISION

[G.R. No. 139034, June 06, 2001]

**DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS.
THE HONORABLE COURT OF APPEALS, ENVIRONMENTAL
AQUATICS, LAND SERVICES AND MANAGEMENT ENTERPRISES,
INC., AND MARIO MATUTE, RESPONDENTS.**

D E C I S I O N

GONZAGA-REYES, J.:

In this petition for review on *certiorari*, petitioner seeks to set aside the (1) 25 January 1999 Resolution of the Court of Appeals^[1] in CA - G.R. CV No. 46207 dismissing petitioner's appeal for failure to file the appellant's brief within the extended period granted by the appellate court and its (2) 14 June 1999 Resolution denying petitioner's motion for reconsideration. The appeal originated from a complaint for redemption filed by private respondents with the Regional Trial Court of Quezon City and docketed as Civil Case No. Q-91-10563. The factual antecedents leading up to the filing of this complaint are related in the trial court's decision, as follows -

On November 8, 1991, Environmental Aquatics and its corporate sister, Land & Services Management Enterprises, Inc., as well as the assignee of the right of redemption of the latter corporation, Mario Matute, filed the instant action with this Court with the following prayer:

- "1. Ordering defendant Development Bank of the Philippines to accept the plaintiff Matute's bonafide offer to redeem the foreclosed property covered by Transfer Certificate of Title No. 209937 of the Register of Deeds of Quezon City pursuant to Sections 29 and 30 of Rule 39 of the Rules of Court.
2. Ordering defendant Development Bank of the Philippines to issue the corresponding release of mortgage and surrender and/or release in favor of plaintiff `Matute' the owner's duplicate copy of the aforesaid Transfer Certificate of Title No. 209937.
3. Ordering defendant DBP to pay the amount of P50,000.00 in the concept of attorney's fees and to pay the costs of suit.

Plaintiffs further pray for additional reliefs which are just and equitable under the premises."

The Bank answered, admitting some allegations of the complaint and denying other allegations, and by way of special and affirmative defenses alleged, among others, that the subject property cannot be redeemed at only P1,507,000.00 unless the total debt of the mortgagors to the Bank were paid, which as of September 11, 1990, amounted to P16,384,418.90. Defendant DBP interposed a counterclaim for what it alleged is a deficiency outstanding obligation in the amount of P14,877,419.90 plus exemplary damages and litigation expenses.

Briefly stated, the undisputed material facts of this case are as follows:

On September 10, 1976 plaintiffs Environmental Aquatics Incorporated and Land & Services Management Enterprises, Inc., executed a MORTGAGE in favor of defendant Development Bank of the Philippines, over two (2) fishing boats (with engines, equipment and accessories) and a parcel of land (its building & improvements) covered by Transfer Certificate of Title No. 209937 of the Registry of Deeds of Quezon City, situated in New Manila, the lot being in the name of Land & Services Management Enterprises, Inc., Exhibits "2", "2-A", and "A". The mortgage was given to secure the payment of P1,792,600.00 or for whatever amount the plaintiffs corporations might be indebted to the DBP. One of the clauses of the mortgage provides that in case of a violation by mortgagors-plaintiffs of any of the conditions of the contract, the mortgagee-defendant Bank "may immediately foreclose this mortgage judicially or extrajudicially under Act No. 3135 as amended, or under Republic Act No. 85, as amended, and or under Act No. 1508 as amended". The encumbrance was annotated on said torrens title, Exh. "9", "9-A" and "9-A-1".

The above initial loan granted under DBP Board Resolution No. 3103 dated August 11, 1976, Exhibits "8" to "8-B", was subsequently restructured thru a liquidation loan of P2,163,800.00 granted under DBP Board Resolution No. 813 dated March 14, 1979, Exhibits "8-C" to "8-F", which was also annotated on TCT No. T-209937, Exh. "9-B-1".

On August 31, 1981, plaintiffs corporations were again granted an opportunity to restructure their loan account as evidenced by three (3) Promissory Notes marked during the trial as Exhibits "1", "1-A" and "1-B". Exhibits "1" is for the amount of P1,973,100.00 while Exhibit "1-A" is for P190,700.00 - both of which mature on March 14, 1986. On the other hand, Exhibit "1-B", taken for interest in the amount of P684,788.00, matures on March 14, 1982.

On October 25, 1990, plaintiffs sisters corporations being unable to pay their debt which amounted to P16,384,419.90 as of September 11, 1990, the defendant Development Bank of the Philippines applied and asked the Quezon City Ex-Officio RTC Sheriff to foreclose and sell the mortgage property at public auction in accordance with the provisions of Act No. 3135, as amended by Act No. 4118, Exhibit "3".

So, on November 16, 1990, in accordance with the terms of the promissory notes and the mortgage contract itself, Ex-Officio Sheriff

notified plaintiffs corporations of the scheduled public auction and had the Notice of Sheriff's Sale published as required by law, Exhs. "4" and "B". The Sheriff accordingly extrajudicially foreclosed and sold the subject lot at auction on December 19, 1990, with defendant Bank itself as the highest bidder for P1,507,000.00 Exh. "C". Thereupon, a Sheriff's Certificate of Sale dated December 19, 1990, was issued by the Ex-Officio Sheriff covering TCT No. 209937, Exhs. "5" and "D". Upon the certificate of sale issued in favor of the defendant DBP, a condition was made to the effect that the period of redemption will expire one year from and after the date of registration of the sale in the Registry of Deeds for Quezon City.

Plaintiff Mario Matute, thru counsel Atty. Julian R. Vitug, Jr., to whom plaintiffs-corporations assigned or transferred its rights of redemption, wrote defendant DBP on July 27, 1991, Exhibits "G" and "10", made known his desire to redeem the New Manila property. The letter of plaintiff Matute in this regard reads in part thus:

"In furtherance to the purpose of this representation, we shall appreciate it very much if your office can officially advise us of the principal obligation inclusive of interest for the period covering December 19, 1990 up to and including August 19, 1991 as well as other reasonable assessments that may have been incurred in connection with the aforesaid auction sale.

We shall immediately remit our client's payment by way of Manager's Check in redeeming the auctioned property as soon as we get the accurate figures in writing.

Thank you very much in anticipation for your kind indulgence and look forward to receiving your reply soonest time possible.

Very truly yours,

(Sgd./T) JULIAN R. VITUG, JR."

Under date of August 16, 1991, defendant Bank Bacolod Branch objected to "piecemeal redemption" but adding that should redemption be effected, the entire amount owed to the Bank as per updated Statement of Total Claim as of August 31, 1991", Exh. "7-A", be paid. The following was the reply of defendant DBP, Exhibit "7":

"This refers to your letter dated July 27, 1991, in behalf of Mr. Mario Matute, Director of Land & Services Management Enterprises, Inc., informing us of his intention to redeem the property, particularly TCT-T-No. 209937 of the Register of Deeds of Quezon City.

We understand from your letter that Mr. Matute is only

interested in redeeming the land subjected to Sheriff's Auction Sale dated December 19, 1990, at its acquisition cost of P1,507,000.00.

Please be informed that existing bank policies do not allow piecemeal redemption of foreclosed properties, hence, we cannot give due course to your request.

However, if your client is amenable to redeem the foreclosed properties of subject corporation, please submit your concrete offer by way of a Board Resolution authorizing Mr. Mario Matute to negotiate for redemption of said properties.

In this connection, we are sending herewith an updated Statement of Total Claim as of August 31, 1991 re subject matter, for your information and guidance."

The point of contention between the parties relates to the amount of the redemption price. Petitioner insisted that, pursuant to Section 16 of Executive Order No. 81,^[2] redemption may only be made if private respondent Mario Matute, the assignee of the right of redemption, paid it the amount of the loan outstanding as of 12 December 1990 - the date of the foreclosure sale - in the amount of P18,301,653.11. Private respondents, on the other hand, contended that redemption may be effected by paying petitioner P1,507,000.00 - the amount which petitioner had paid for the property at the auction sale, pursuant to Section 5 of Act No. 3135 and Sections 26 to 30 of Rule 39 of the Rules of Court.

On 7 January 1994, the trial court held that private respondent Matute must exercise his right of redemption in accordance with Section 6 of Act No. 3135 and Sections 29 to 32 of Rule 39 of the Rules of Court. In particular, Section 30 of Rule 39 provides that the judgment debtor or his successor-in-interest "may redeem the property from the purchaser at any time within twelve months after the sale, on paying the purchaser the amount of his purchase, with one per centum per month interest thereon in addition, up to the time of redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after the purchase, and interest on such last-named amount at the same rate." On petitioner's counterclaim, the trial court declared that petitioner is entitled to recover from private respondents Environmental Aquatics and Land Services Management Enterprises, Inc. the deficiency arising after the extrajudicial foreclosure of the mortgaged property. The dispositive portion of the trial court's decision states -

WHEREFORE, judgment is hereby rendered declaring plaintiff Mario Matute entitled to redeem or repurchase the parcel of land described in the complaint from the defendant Development Bank of the Philippines and, upon payment by plaintiff Mario Matute of the amount due to defendant DBP pursuant to Sec. 30 of Rule 39, Revised Rules of Court, defendant Development Bank of the Philippines is hereby ordered to surrender the owner's duplicate copy of Transfer Certificate of Title No. 209937 of the Register of Deeds of Quezon City and transfer the title to

the property in question to plaintiff Mario Matute.

On the counterclaim, ordering plaintiffs Environmental Aquatics Incorporated and Land Services Management Enterprises, Inc., to pay jointly and severally to defendant Development Bank of the Philippines their deficiency outstanding obligation in the amount of P16,794,653.00, with 6% interest from December 19, 1990 until fully paid.

The complaint against defendant Register of Deeds of Quezon City and defendant Deputy Sheriff Cesar P. Cruz is dismissed. The other claims of the parties against each other for attorney's fees, exemplary damages and expenses of litigation are likewise dismissed for lack of sufficient basis. No costs.

IT IS SO ORDERED.^[3]

On 25 April 1994, petitioner's motion for reconsideration was denied by the trial court. Thus, petitioner filed its notice of appeal with the trial court within the reglementary period. On 31 May 1994, the trial court ordered the elevation of the original records to the Court of Appeals.

On 6 July 1998, petitioner received notice to file its appellant's brief. However, on 20 August 1998, at the expiration of the period for filing its brief, petitioner asked the appellate court for an extension of thirty (30) days, or until 19 September 1998, invoking in support thereof counsel's heavy workload. The Court of Appeals granted petitioner's motion in a resolution dated 8 September 1998.

On 21 September 1998 - as 19 September 1998 was a Saturday - petitioner filed a second motion for extension of thirty (30) days, or until 19 October 1998. The appellate court granted this second extension in its resolution of 1 October 1998.

Petitioner filed another motion for extension on 19 October 1998, claiming that the lawyer assigned to the case was stricken with acute bronchitis. The twenty (20) day extension prayed for by petitioner in its third motion, ending on 8 November 1998, was acquiesced to by the Court of Appeals in its 11 November 1998 resolution.

On 9 November 1998, since 8 November 1998 was a Sunday, petitioner begged the Court of Appeals for another reprieve of ten (10) days, or until 18 November 1998, in order to file its appellant's brief, alleging that the handling lawyer had just reported back to work and needed time to complete the revisions to the prepared brief.

Even before having received the appellate court's action on its most recent motion, on 18 November 1998, petitioner filed a fifth motion for extension of ten (10) days, or until 28 November 1998. Petitioner claimed that it needed time for the handling lawyer to input the revisions after the appellant's brief was reviewed by the latter's superiors.

On 20 November 1998, private respondents filed a motion to dismiss petitioner's appeal for failure to submit its appellant's brief.