

THIRD DIVISION

[G.R. No. 120040, January 29, 1996]

SPS. CAMILO Y. GO AND DELIA L. GO, PETITIONERS, VS. COURT OF APPEALS, HON. MARCELINO F. BAUTISTA, JR. AND MANUELA REALTY DEVELOPMENT CORP., RESPONDENTS.

D E C I S I O N

FRANCISCO, J.:

In this petition for review on certiorari, petitioners spouses Camilo and Delia Go, through counsel, posed this query: "May respondent court be compelled by mandamus to grant the motion for summary judgment when there is no genuine issue as to a material fact raised in the opposition thereto?"^[1] The antecedent facts are as follows:

To secure a loan of P93,200.00 with 14% interest p/a, petitioners on June 15, 1978, constituted a real estate mortgage over their house and lot covered by TCT No. 30532 of the Registry of Deeds of Pasay City in favor of herein private respondent Manuela Realty Development Corporation (Manuela). For alleged petitioners' failure to heed Manuela's repeated demands for payment of the loan, Manuela moved for the extrajudicial foreclosure of the subject properties pursuant to a provision in the deed of mortgage. The ex-officio sheriff of Makati City conducted a public auction sale on September 9, 1989, where Manuela submitted the lone and winning bid of P251,15 1.74, petitioners' alleged outstanding debt at the time. After the expiration of the redemption period, Manuela filed its affidavit of consolidation of ownership before the Register of Deeds. Thus, ownership of the mortgaged properties was consolidated in Manuela and a new Transfer Certificate of Title (TCT No. T-1884) was thereafter issued in its name.

Petitioners filed on August 21, 1989, and later amended on November 20, 1989, a complaint for recovery of ownership of the subject properties against Manuela before the Regional Trial Court of Makati City, Branch 136, docketed as Civil Case No. 89-4839. They alleged payment of five hundred dollars (\$500) to Manuela sometime in 1982 by money transfer order through Security Pacific National Bank, and payment of the entire loan as all their installment payments, if added, will amount to P95, 946.67 which sum is more than their contracted loan. Petitioners also raised as an issue the alleged invalidity of the extra-judicial foreclosure of the subject properties and usury on the ground that the stipulated 14% interest p/a exceeds the 12% applicable interest ceiling. In its answer, Manuela countered that petitioners failed to pay their obligation and, in fact, argued that it was their continued default thereof which caused their outstanding debt to increase. Manuela maintained that the extra-judicial foreclosure sale in question was valid and the 14% stipulated interest was not usurious. Petitioners subsequently moved for summary judgment attaching their joint affidavit which Manuela opposed, albeit without attaching its own counter-affidavit. The trial court found that there are