

FIRST DIVISION

[G.R. NO. 170102, July 27, 2007]

**SPOUSES FRANCISCO AND GLORIA SALCEDO, PETITIONERS, VS.
AMELIA MARINO, JOINED BY HER HUSBAND CECILIO MARINO,
RESPONDENTS.**

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

For our resolution is the instant Petition for Review on Certiorari assailing the Decision^[1] of the Court of Appeals (Special Seventeenth Division) dated August 22, 2005 in CA-G.R. SP No. 87932.

On October 3, 1990, spouses Francisco and Gloria Salcedo, petitioners, obtained a loan of ₱98,000.00 from spouses Amelia and Cecilio Marino, respondents. To secure this loan, petitioners executed a real estate mortgage over their residential property located at No. 36-B, East Bajac-Bajac, Olongapo City. The term of the loan was one (1) year.

Petitioners failed to pay their indebtedness within the period stipulated. Hence, on December 13, 1993, the parties executed before the barangay captain of East Bajac-bajac, Olongapo City, an agreement extending the period for payment to another year; and providing that should petitioners fail to pay their obligation within the extended period, they will surrender their mortgaged property voluntarily to respondents.

Petitioners again failed to pay their loan, prompting respondents to file with the Municipal Trial Court in Cities (MTCC), Branch 3, Olongapo City a motion for the issuance of a writ of execution, docketed as MTCC Case No. 34-94.

On August 9, 1996, the MTCC granted respondents' motion and issued an Order directing the issuance of a writ of execution pursuant to Section 417 of Republic Act 7160 (Revised Local Government Code)^[2] and ordering petitioners to surrender voluntarily their mortgaged property to respondents.

On August 23, 1996, the writ of execution was implemented and respondents were placed in possession of the property. Eventually, petitioners filed a motion to recall the writ and to be allowed to deposit ₱98,000.00. The MTCC denied the motion, holding that it had become moot and that the issues raised therein can be heard in a separate civil action.

On June 6, 1997, petitioners filed with the same MTCC a complaint for recovery of possession, docketed as Civil Case No. 3568. But for lack of barangay conciliation, the MTCC, in its Decision dated September 2, 1997, denied the petition.

On appeal, the Regional Trial Court (RTC) of Olongapo City issued an Order dated April 27, 1998 affirming the MTCC Decision.

Petitioners elevated the matter to the Court of Appeals via a petition for review, docketed as CA-G.R. SP No. 48088.

On October 28, 1998, the Court of Appeals rendered its Decision reversing the RTC Order of April 27, 1998 and declaring that petitioners are entitled to recover possession of the mortgaged property on the ground that the agreement to extend the term of the loan contained a *pactum commissarium*.

Respondents then filed with this Court a petition for review on certiorari. In its Decision dated November 15, 2000, this Court ordered that the case be remanded to the MTCC for further proceedings to determine whether petitioners "are entitled to possession of the mortgaged property."

After trial on the merits, the MTCC promulgated its Decision dated March 29, 2004 dismissing petitioners' complaint for lack of cause of action since the mortgaged property had already been sold at public auction in favor of respondents and that the sheriff, on December 16, 1991, issued the corresponding Certificate of Sale.

Petitioners appealed to the RTC, Branch 72, Olongapo City, docketed as Civil Case No. 244-0-04.

On June 14, 2004, the RTC ordered petitioners to file their memorandum within fifteen (15) days from notice. Instead of complying with the Order, they filed a motion for extension of 15 days within which to file their memorandum which was granted by the RTC. Again, they failed to file the required memorandum. Subsequently, they filed anew a motion asking for another extension of fifteen (15) days. Once more, the RTC granted the motion.

However, despite the two (2) extensions, petitioners still failed to file their memorandum. Consequently, the RTC, in an Order dated November 24, 2004, dismissed their appeal.

Petitioners filed a motion for reconsideration. Attached thereto was their memorandum. They alleged that their counsel had a heavy workload and that he had difficulty getting in touch with them because they transferred their residence to Manila.

In its Order of December 1, 2004, the RTC denied petitioners' motion, stating that it had given them enough time to file their memorandum. Moreover, although they transferred to Manila, they could still communicate with their counsel regarding the case.

Petitioners then filed with the Court of Appeals a petition for review, docketed as CA-G.R. SP No. 87932. However, it was denied by the appellate court in its Decision dated August 22, 2005, thus:

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED and the assailed Orders of the Regional Trial Court of Olongapo City, Branch 72 dated November 24, 2004 and December 1, 2004 are hereby AFFIRMED.