

## FIRST DIVISION

[ G.R. NO. 147902, March 17, 2006 ]

**SPOUSES VICENTE YU AND DEMETRIA LEE-YU, PETITIONERS,  
VS. PHILIPPINE COMMERCIAL INTERNATIONAL BANK,  
RESPONDENT**

### D E C I S I O N

**AUSTRIA-MARTINEZ, J.:**

Before the Court is a Petition for Review on *Certiorari* of the Decision<sup>[1]</sup> dated November 14, 2000 of the Court of Appeals (CA) in CA-G.R. SP No. 58982 and the CA Resolution dated April 26, 2001, which denied petitioner's Motion for Reconsideration.

The factual background of the case is as follows:

Under a Real Estate Mortgage dated August 15, 1994<sup>[2]</sup> and Amendments of Real Estate Mortgage dated April 4, 1995<sup>[3]</sup> and December 4, 1995,<sup>[4]</sup> spouses Vicente Yu and Demetria Lee-Yu (petitioners) and spouses Ramon T. Yu and Virginia A. Tiu, or Yu Tian Hock aka Victorino/Vicente Yu, mortgaged their title, interest, and participation over several parcels of land located in Dagupan City and Quezon City, in favor of the Philippine Commercial International Bank (respondent) as security for the payment of a loan in the amount of P9,000,000.00.<sup>[5]</sup>

As the petitioners failed to pay the loan, the interest, and the penalties due thereon, respondent filed on July 21, 1998 with the Office of the Clerk of Court and Ex-Officio Sheriff of the Regional Trial Court of Dagupan City a Petition for Extra-Judicial Foreclosure of Real Estate Mortgage on the Dagupan City properties.<sup>[6]</sup> On August 3, 1998, the City Sheriff issued a Notice of Extra-Judicial Sale scheduling the auction sale on September 10, 1998 at 10:00 o'clock in the morning or soon thereafter in front of the Justice Hall, Bonuan, Tondaligan, Dagupan City.<sup>[7]</sup>

At the auction sale on September 10, 1998, respondent emerged as the highest bidder.<sup>[8]</sup> On September 14, 1998, a Certificate of Sale was issued in favor of respondent.<sup>[9]</sup> On October 1, 1998, the sale was registered with the Registry of Deeds of Dagupan City.

About two months before the expiration of the redemption period, or on August 20, 1999, respondent filed an *Ex-Parte* Petition for Writ of Possession before the Regional Trial Court of Dagupan City, docketed as Special Proceeding No. 99-00988-D and raffled to Branch 43 (RTC Branch 43).<sup>[10]</sup> Hearing was conducted on September 14, 1999 and respondent presented its evidence *ex-parte*.<sup>[11]</sup> The testimony of Rodante Manuel was admitted *ex-parte* and thereafter the petition was

deemed submitted for resolution.

On September 30, 1999, petitioners filed a Motion to Dismiss and to Strike Out Testimony of Rodante Manuel stating that the Certificate of Sale dated September 14, 1998 is void because respondent violated Article 2089 of the Civil Code on the indivisibility of the mortgaged by conducting two separate foreclosure proceedings on the mortgage properties in Dagupan City and Quezon City and indicating in the two notices of extra-judicial sale that petitioners' obligation is P10,437,015.20<sup>[12]</sup> as of March 31, 1998, when petitioners are not indebted for the total amount of P20,874,031.56.<sup>[13]</sup>

In the meantime, petitioners filed a complaint for Annulment of Certificate of Sale before the Regional Trial Court of Dagupan City, docketed as Civil Case No. 99-03169-D and raffled to Branch 44 (RTC Branch 44).

On February 14, 2000, RTC Branch 43 denied petitioners' Motion to Dismiss and to Strike Out Testimony of Rodante Manuel, ruling that the filing of a motion to dismiss is not allowed in petitions for issuance of writ of possession under Section 7 of Act No. 3135.<sup>[14]</sup>

On February 24, 2000, petitioners filed a Motion for Reconsideration, further arguing that the pendency of Civil Case No. 99-03169-D in RTC Branch 44 is a prejudicial issue to Spec. Proc. No. 99-00988-D in RTC Branch 43, the resolution of which is determinative on the propriety of the issuance of a writ of possession.<sup>[15]</sup>

On May 8, 2000, RTC Branch 43 denied petitioners' Motion for Reconsideration, holding that the principle of prejudicial question is not applicable because the case pending before RTC Branch 44 is also a civil case and not a criminal case.<sup>[16]</sup>

On June 1, 2000, petitioners filed a Petition for *Certiorari* with the CA.<sup>[17]</sup> On November 14, 2000, the CA dismissed petitioners' Petition for *Certiorari* on the grounds that petitioners violated Section 8 of Act No. 3135 and disregarded the rule against multiplicity of suits in filing Civil Case No. 99-03169-D in RTC Branch 44 despite full knowledge of the pendency of Spec. Proc. No. 99-00988-D in RTC Branch 43; that since the one-year period of redemption has already lapsed, the issuance of a writ of possession in favor of respondent becomes a ministerial duty of the trial court; that the issues in Civil Case No. 99-03169-D are not prejudicial questions to Spec. Proc. No. 99-00988-D because: (a) the special proceeding is already *fait accompli*, (b) Civil Case No. 99-03169-D is deemed not filed for being contrary to Section 8 of Act No. 3135, (c) the filing of Civil Case No. 99-03169-D is an afterthought and dilatory in nature, and (d) legally speaking what seems to exist is *litis pendentia* and not prejudicial question.<sup>[18]</sup>

Petitioners filed a Motion for Reconsideration<sup>[19]</sup> but it was denied by the CA on April 26, 2001.<sup>[20]</sup>

Hence, the present Petition for Review on *Certiorari*.

Petitioners pose two issues for resolution, to wit:

- A. Whether or not a real estate mortgage over several properties located in different locality [sic] can be separately foreclosed in different places.
- B. Whether or not the pendency of a prejudicial issue renders the issues in Special Proceedings No. 99-00988-D as [sic] moot and academic.<sup>[21]</sup>

Anent the first issue, petitioners contend that since a real estate mortgage is indivisible, the mortgaged properties in Dagupan City and Quezon City cannot be separately foreclosed. Petitioners further point out that two notices of extra-judicial sale indicated that petitioners' obligation is P10,437,015.20<sup>[22]</sup> each as of March 31, 1998 or a total of P20,874,030.40,<sup>[23]</sup> yet their own computation yields only P9,957,508.90 as of February 27, 1998.

As to the second issue, petitioners posit that the pendency of Civil Case No. 99-03169-D is a prejudicial issue, the resolution of which will render the issues in Spec. Proc. No. 99-00988-D moot and academic. Petitioners further aver that they did not violate Section 8 of Act No. 3135 in filing a separate case to annul the certificate of sale since the use of the word "may" in said provision indicates that they have the option to seek relief of filing a petition to annul the certificate of sale in the proceeding involving the application for a writ of possession or in a separate proceeding.

Respondent contends<sup>[24]</sup> that, with respect to the first issue, the filing of two separate foreclosure proceedings did not violate Article 2089 of the Civil Code on the indivisibility of a real estate mortgage since Section 2 of Act No. 3135 expressly provides that extra-judicial foreclosure may only be made in the province or municipality where the property is situated. Respondent further submits that the filing of separate applications for extra-judicial foreclosure of mortgage involving several properties in different locations is allowed by A.M. No. 99-10-05-0, the Procedure on Extra-Judicial Foreclosure of Mortgage, as further amended on August 7, 2001.

As to the second issue, respondent maintains that there is no prejudicial question between Civil Case No. 99-03169-D and Spec. Proc. No. 99-00988-D since the pendency of a civil action questioning the validity of the mortgage and the extra-judicial foreclosure thereof does not bar the issuance of a writ of possession. Respondent also insists that petitioners should have filed their Petition to Annul the Certificate of Sale in the same case where possession is being sought, that is, in Spec. Proc. No. 99-00988-D, and not in a separate proceeding (Civil Case No. 99-01369-D) because the venue of the action to question the validity of the foreclosure is not discretionary since the use of the word "may" in Section 8 of Act No. 3135 refers to the filing of the petition or action itself and not to the venue. Respondent further argues that even if petitioners filed the Petition to Annul the Certificate of Sale in Spec. Proc. No. 99-00988-D, the writ of possession must still be issued because issuance of the writ in favor of the purchaser is a ministerial act of the trial court and the one-year period of redemption has already lapsed.

Anent the first issue, the Court finds that petitioners have a mistaken notion that the indivisibility of a real estate mortgage relates to the venue of extra-judicial

foreclosure proceedings. The rule on indivisibility of a real estate mortgage is provided for in Article 2089 of the Civil Code, which provides:

Art. 2089. A pledge or mortgage is indivisible, even though the debt may be divided among the successors in interest of the debtor or of the creditor.

Therefore, the debtor's heir who has paid a part of the debt cannot ask for the proportionate extinguishment of the pledge or mortgage as the debt is not completely satisfied.

Neither can the creditor's heir who received his share of the debt return the pledge or cancel the mortgage, to the prejudice of the other heirs who have not been paid.

From these provisions is excepted the case in which, there being several things given in mortgage or pledge, each one of them guarantees only a determinate portion of the credit.

The debtor, in this case, shall have a right to the extinguishment of the pledge or mortgage as the portion of the debt for which each thing is specially answerable is satisfied.

This rule presupposes several heirs of the debtor or creditor<sup>[25]</sup> and therefore not applicable to the present case. Furthermore, what the law proscribes is the foreclosure of only a portion of the property or a number of the several properties mortgaged corresponding to the unpaid portion of the debt where, before foreclosure proceedings, partial payment was made by the debtor on his total outstanding loan or obligation. This also means that the debtor cannot ask for the release of any portion of the mortgaged property or of one or some of the several lots mortgaged unless and until the loan thus secured has been fully paid, notwithstanding the fact that there has been partial fulfillment of the obligation. Hence, it is provided that the debtor who has paid a part of the debt cannot ask for the proportionate extinguishment of the mortgage as long as the debt is not completely satisfied.<sup>[26]</sup> In essence, indivisibility means that the mortgage obligation cannot be divided among the different lots,<sup>[27]</sup> that is, each and every parcel under mortgage answers for the totality of the debt.<sup>[28]</sup>

On the other hand, the venue of the extra-judicial foreclosure proceedings is the place where each of the mortgaged property is located, as prescribed by Section 2 of Act No. 3135,<sup>[29]</sup> to wit:

SECTION 2. Said sale cannot be made legally outside of the province in which the property sold is situated; and in case the place within said province in which the sale is to be made is subject to stipulation, such sale shall be made in said place or in the municipal building of the municipality in which the property or part thereof is situated.

A.M. No. 99-10-05-0,<sup>[30]</sup> the Procedure on Extra-Judicial Foreclosure of Mortgage, lays down the guidelines for extra-judicial foreclosure proceedings on mortgaged properties located in different provinces. It provides that the venue of the extra-

judicial foreclosure proceedings is the place where each of the mortgaged property is located. Relevant portion thereof provides:

Where the application concerns the extrajudicial foreclosure of mortgages of real estates and/or chattels in different locations covering one indebtedness, only one filing fee corresponding to such indebtedness shall be collected. The collecting Clerk of Court shall, apart from the official receipt of the fees, issue a certificate of payment indicating the amount of indebtedness, the filing fees collected, the mortgages sought to be foreclosed, the real estates and/or chattels mortgaged and their respective locations, **which certificate shall serve the purpose of having the application docketed with the Clerks of Court of the places where the other properties are located and of allowing the extrajudicial foreclosures to proceed thereat.** (Emphasis supplied)

The indivisibility of the real estate mortgage is not violated by conducting two separate foreclosure proceedings on mortgaged properties located in different provinces as long as each parcel of land is answerable for the entire debt. Petitioners' assumption that their total obligation is P20,874,030.40 because the two notices of extra-judicial sale indicated that petitioners' obligation is P10,437,015.20<sup>[31]</sup> each, is therefore flawed. Considering the indivisibility of a real estate mortgage, the mortgaged properties in Dagupan City and Quezon City are made to answer for the entire debt of P10,437,015.29.<sup>[32]</sup>

As to the second issue, that is, whether a civil case for annulment of a certificate of sale is a prejudicial question to a petition for issuance of a writ of possession, this issue is far from novel and, in fact, not without precedence. In *Pahang v. Vestil*,<sup>[33]</sup> the Court said:

A prejudicial question is one that arises in a case the resolution of which is a logical antecedent of the issue involved therein, and the cognizance of which pertains to another tribunal. It generally comes into play in a situation where a civil action and a criminal action are both pending and there exists in the former an issue that must be preemptively resolved before the criminal action may proceed, because howsoever the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case. The rationale behind the principle of prejudicial question is to avoid two conflicting decisions.

In the present case, the complaint of the petitioners for Annulment of Extrajudicial Sale is a civil action and the respondent's petition for the issuance of a writ of possession of Lot No. 3-A, Block 1, Psd-07-021410, TCT No. 44668 is but an incident in the land registration case and, therefore, no prejudicial question can arise from the existence of the two actions. A similar issue was raised in *Manalo v. Court of Appeals*, where we held that:

At any rate, it taxes our imagination why the questions raised in Case No. 98-0868 must be considered determinative of Case No. 9011. The basic issue in the former is whether the respondent, as the purchaser in the extrajudicial foreclosure