

SECOND DIVISION

[G.R. No. 157616, July 22, 2005]

ISIDRO PEREZ AND NARCISO A. RAGUA, PETITIONERS, VS. HON. COURT OF APPEALS, HON. VIVENCIO S. BACLIG AND SPOUSES GAUDENCIO DIGOS, JR. AND RHODORA DIGOS, RESPONDENTS.

DECISION

CALLEJO, SR., J.:

The spouses Gaudencio Digos, Jr. and Rhodora Digos secured a loan of P5,800,000.00 from the International Exchange Bank in December 1996, to finance their project for the construction of townhouses on their property covered by Transfer Certificate of Title (TCT) No. 168790 located in Tandang Sora, Quezon City. To secure the payment of the loan, the spouses Digos executed a Real Estate Mortgage over the said property. However, the completion of their project was delayed, partly because some homeowners in the Pillarville Subdivision (which abutted the subject property) refused to allow them to build an access road through the subdivision to the property. Thus, the equipment to be used for the project could not pass through the Pillarville Subdivision.

Because of the spouses Digos' failure to pay the amortizations on their loan, the bank caused the extrajudicial foreclosure of their real estate mortgage. Consequently, the property was sold at public auction, with the bank as the highest bidder at P4,500,000.00, which appeared to be the account of the spouses Digos at the time. The Certificate of Sale executed by the sheriff was, thereafter, registered at the Office of the Register of Deeds on September 7, 1998.^[1]

In the meantime, the spouses Digos referred the matter of the right of way to the *barangay* captain for settlement. Due to the vehement objections of some Pillarville Subdivision homeowners, the *barangay* captain failed to resolve the matter.^[2]

On July 2, 1999, the spouses Digos wrote the bank, requesting for a period of six (6) months from September 7, 1999 within which to redeem the property.^[3] However, the bank denied the request. On August 3, 1999, the spouses again wrote to the bank, pleading for an extension of at least three (3) months to redeem the property.^[4] In a Letter^[5] to the spouses dated August 30, 1999, the bank granted the spouses Digos a period of one month from September 8, 1999 (or until October 8, 1999) within which to redeem the property. However, the bank consolidated its title over the property, and on September 19, 1999, the Register of Deeds issued TCT No. 206979 in the name of the bank.

Instead of repurchasing the property on or before October 8, 1999, the spouses Digos filed a Complaint^[6] against the bank on October 7, 1999 with the Regional Trial Court (RTC) of Quezon City, for the nullification of the extrajudicial foreclosure of the real estate mortgage and sale at public auction and/or redemption of the property, with a prayer for a temporary restraining order and a writ of preliminary injunction to enjoin

the bank from consolidating its title over the property. The spouses Digos also sought judgment for damages.

In their complaint, the spouses Digos alleged, *inter alia*, that they were denied their right to due process because the foreclosure of the real estate mortgage was extrajudicial; the sale of their property at public auction was without prior notice to them; the property was sold for only P4,500,000.00, the balance of their account with the bank, but about 400% lower than the prevailing price of the property; the bank rejected their plea for a five-month extension to redeem, and their offer of P1,000,000.00 in partial payment of their loan account to reduce the same to P3,500,000.00, but the bank granted them an extension of only one month to redeem the property, designed to divest them of the same and enrich some characters at their expense; because of the foregoing acts of the bank, they suffered sleepless nights, nervous tension and the rise in their blood pressure for which they were entitled to moral damages in the amount of P500,000.00, aside from the exemplary damages they were entitled to in the amount of P100,000.00.

The spouses Digos prayed for a temporary restraining order to enjoin the bank from consolidating its title over the property, and that judgment be rendered in their favor, thus:

. . .

2. Ordering the defendant Bank to allow plaintiffs to redeem their property;
3. Making the writ of injunction permanent;
4. Ordering the defendant Bank to pay moral damages of P500,000.00;
5. Ordering defendant Bank to pay exemplary damages of P200,000.00;
6. Ordering defendant Bank to pay attorney's fee of P30,000.00 plus P2,000.00 for every appearance in Court;

Plaintiffs further pray for such other reliefs and remedies available within the premises.^[7]

The case (first complaint, for brevity) was docketed as Civil Case No. Q-99-38941. The spouses Digos caused the annotation of a notice of *lis pendens* at the dorsal portion of TCT No. 206979. The trial court, however, did not issue a temporary restraining order or writ of preliminary injunction.

Meanwhile, the bank filed a motion to dismiss the complaint and for the cancellation of the notice of *lis pendens* on the following grounds:

1. The action for injunction has already been rendered moot and academic, title to the foreclosed property having been consolidated in iBank's name;
2. Assuming arguendo that title to the foreclosed property has not yet been consolidated, still plaintiffs have no cause of action for injunction against iBank.^[8]

The spouses Digos opposed the motion. The bank filed a reply, appending thereto a copy of TCT No. 206979 in its name.

In an Order dated December 9, 1999, the trial court granted the motion and dismissed the complaint. It found that the spouses Digos admitted in their complaint that the period for the redemption of the property was about to expire, and that they were given up to October 8, 1999 within which to do so. The court held that it had no authority to extend the period for redemption, and since it had already expired, the spouses had no more right to redeem the property; as such, the defendant had the right to consolidate its title over the property, and had, in fact, been issued TCT No. 206979. The court also declared that the spouses Digos had no right to demand that they be allowed to redeem the property.

Finally, since the act sought to be enjoined - the consolidation of the bank's title - was already *fait accompli*, the spouses Digos had no cause of action for injunction.^[9] The trial court ruled that a writ of injunction cannot issue to enjoin a consummated act.^[10] It, thus, ordered the cancellation of the notice of *lis pendens* annotated at the dorsal portion of TCT No. 206979.

The spouses Digos failed to appeal the order; instead, they filed a petition for *certiorari* with the Court of Appeals (CA), assailing the Order of the RTC. The CA dismissed the petition because it was filed out of time. The petitioners then filed a motion for reconsideration thereof, which they later withdrew *via* a motion. The CA then resolved to grant the motion; hence, the CA resolution dismissing the petition became final and executory on May 7, 2001. Entry of judgment was made of record.^[11]

Meanwhile, the bank sold the property to Isidro Perez and Narciso Ragua to whom the Register of Deeds issued TCT No. 211888. The vendees caused the subdivision of the property into eighteen (18) lots. The Register of Deeds issued titles for each subdivision lot in favor of Perez and Ragua.^[12]

On June 4, 2001, the spouses Digos filed a Complaint^[13] with the RTC of Quezon City, this time, against the bank, Perez and Ragua, for the cancellation and annulment of the extrajudicial foreclosure of the real estate mortgage executed by them in favor of the bank, the sale at public auction as well as the certificate of sale executed by the sheriff, and the Torrens title issued to them. The spouses Digos prayed for a writ of preliminary injunction and a temporary restraining order. The petitory portion of the complaint reads:

WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court that immediately upon the filing of the instant complaint, a temporary restraining order be issued, and after hearing, a writ of preliminary injunction issue, enjoining defendants PEREZ and RAGUA from further disposing of the subject property.

Likewise, it is most respectfully prayed of this Honorable Court that, after due hearing, judgment be rendered ordering the CANCELLATION and ANNULMENT of the extrajudicial foreclosure of sale, the Sheriff's Certificate of Sale and the consolidated title under the name of defendant bank, as well as the transfer certificate/s of title issued or under the name of defendants iBANK, PEREZ and RAGUA;

Further, it is most respectfully prayed also that judgment be rendered ordering the defendants:

1. to pay plaintiffs the amount of FIVE HUNDRED THOUSAND [PESOS] (P500,000.00), as and by way of actual expenses;
2. to pay plaintiffs the amount of ONE MILLION AND FIVE HUNDRED THOUSAND PESOS (P1,500,000.00), as and by way of moral damages;
3. to pay plaintiffs the amount of ONE HUNDRED THOUSAND PESOS (P100,000.00), as and by way of exemplary damages;
4. to pay plaintiffs the amount of FIVE HUNDRED THOUSAND PESOS (P500,000.00), as and by way of attorney's fees; and,
5. to pay the expenses of litigation and costs of suit.

Plaintiffs further pray for other reliefs, just and equitable, under the circumstances.^[14]

The spouses Digos reiterated the allegations in their complaint in Civil Case No. Q-99-38941 that they were not notified of the sale at public auction, and that the bank's P4,500,000.00 bid for the property was unconscionably low compared to the prevailing market price of P25,000,000.00. They also admitted their failure to pay their amortization on their loans. However, they alleged this time that the extrajudicial foreclosure of the real estate mortgage and the sale at public auction were **illegal** because the bank charged much more than the amount due on their loan account, to wit: interest of 26% per annum on the loan account covering January 2, 1998, whereas under the promissory note executed in favor of the bank, the new interest rate should commence only on March 4, 1993; penalty charges of 26% of the account, and 5% penalty charges on top of the 26% interest per annum, as shown by the bank's statement of account. The spouses Digos also averred that although they pleaded for a restructuring of their loan account and a moratorium on the payment of their account, they were unaware of the erroneous computation of the balance of their loan account. They maintained that the bank's consolidation of its title over the property on September 19, 1999 was premature because they were given until October 8, 1999 to redeem the property.

The spouses Digos also alleged that as a consequence of the bank's acts, they incurred actual damages of P500,000.00, sustained moral damages of P1,500,000.00, and were entitled to exemplary damages for P100,000.00.^[15]

The case was docketed as Civil Case No. Q-01-44227. The defendant bank filed a motion to dismiss the complaint on the following grounds:

- A. THE PLAINTIFFS HAVE NO CAUSE OF ACTION AGAINST DEFENDANTS, THEY BEING ESTOPPED FROM QUESTIONING THE REGULARITY OF THE EXTRAJUDICIAL FORECLOSURE SALE.
- B. PLAINTIFFS HAVE VIOLATED THE RULE AGAINST SPLITTING A SINGLE CAUSE OF ACTION UNDER SECTION 4, RULE 2 OF THE RULES OF COURT IN INSTITUTING THE INSTANT CASE.
- C. PLAINTIFFS ARE GUILTY OF FORUM SHOPPING.
- D. PLAINTIFFS ARE GUILTY OF FALSE CERTIFICATION AGAINST FORUM SHOPPING, IN VIOLATION OF SECTION 5, RULE 7 OF THE RULES OF COURT.^[16]

The bank alleged that the spouses Digos admitted in their complaint that, after the extrajudicial foreclosure of the real estate mortgage and the sale of the property at public auction, they pleaded to redeem the property but failed to do so and were granted a one-month extension. The bank averred that, based on the said allegations, the spouses were estopped from assailing the extrajudicial foreclosure of the real estate mortgage, the sale at public auction and the Torrens title issued to it; hence, they had no cause of action. It further alleged that the spouses Digos already assailed the extrajudicial foreclosure of the real estate mortgage and the sale of the property at public auction on account of lack of due process and arbitrary abuse in their first complaint; they again sought to do so in this case, this time grounded on the invalid foreclosure of the real estate mortgage, and the sale at public auction of the property for an amount in excess of the balance of the loan account. The bank argued that, in so doing, the spouses Digos were guilty of splitting a single cause of action which is proscribed by Rule 2, Section 4 of the Rules of Court; they were, likewise, barred by *res judicata* from filing the second complaint for the same causes of action, even if additional defendants were impleaded. Consequently, the spouses Digos were also guilty of forum shopping.^[17]

Perez and Ragua filed a motion to dismiss on similar grounds of *res judicata*, splitting of a single cause of action and forum shopping.^[18]

On June 29, 2001, the trial court issued an Order^[19] denying the motion, ruling that there was no identity of issue in the two actions because, in the second complaint (docketed as Civil Case No. Q-01-44227), the spouses Digos assailed the legality of the extrajudicial foreclosure, on the sole ground that the bank had unlawfully increased their obligation, contrary to the terms and conditions of the loan contract. The court held that the causes of action in the two complaints were not identical: in the first case, it was for the redemption of the mortgaged property, distinct and separate from their cause of action in the second case which is rooted on the erroneous computation of the balance of their loan account with the bank. The court also declared that in the first complaint, the spouses Digos assailed the validity or regularity of the extrajudicial foreclosure of the real estate mortgage and the sale at public auction. Consequently, the court concluded, the complaint was not barred by *res judicata*; nor are they guilty of forum shopping.

The trial court denied the defendants' motion for reconsideration in its Order^[20] dated December 6, 2001; hence, they filed a petition^[21] for *certiorari*, prohibition and mandamus with the CA, alleging therein that the respondent judge committed a grave abuse of his discretion amounting to excess or lack of jurisdiction in denying their motion to dismiss the complaint.

On November 25, 2002, the CA rendered judgment dismissing the petition and affirming the assailed orders. The appellate court declared that there was no identity of causes of action in the two cases because the first action was one for injunction and redemption of the property, whereas the second action was for the nullification of the extrajudicial foreclosure of the real estate mortgage and the sale at public auction due to the erroneous computation of the balance on the respondents' account with the bank; hence, the spouses Digos were not estopped from filing their second action.^[22] The petitioners filed a motion for a reconsideration of the said decision, which the appellate court denied.^[23]