

## FIFTH DIVISION

[ CA-G.R. CV NO. 97811, November 28, 2014 ]

**SPOUSES EDGARDO AND OFELIA CRUZ (BOTH DECEASED, BUT REPRESENTED BY THEIR SURVIVING HEIRS / CHILDREN, NAMELY: JOSE MARI CONRAD CRUZ, MARIA VERONICA CRUZ, MARIA VICTORIA DAKANAY, MA. VIOLETA C. LOZADA AND MARIA VERA CRUZ, PLAINTIFFS-APPELLANTS, VS. PHILIPPINE VETERANS BANK, DEFENDANT-APPELLEE.**

### DECISION

**BARZA, J.:**

On appeal before the Court is the June 22, 2009 decision<sup>[1]</sup> of the Regional Trial Court of Quezon City, Branch 225, in **Civil Case No. Q-95-24298**, dismissing the complaint<sup>[2]</sup> for specific performance and damages with prayer for issuance of a temporary restraining order and injunction filed by appellant spouses Edgardo and Ofelia Cruz (appellant spouses for brevity) against appellee Philippine Veterans Bank (Bank for brevity).

Appellant spouses are the registered owners of a parcel of land and its existing improvements situated in No. 1040 A. Bonifacio St., Balintawak, Quezon City, covered by **Transfer Certificate of Title No. 261801**. E.V. Cruz and Sons, Inc., a corporation duly organized and existing under Philippine law, is the registered owner of a piece of land together with its existing improvements located at No. 1040 A. Bonifacio St., Balintawak, Quezon City, covered by **TCT No. 261158**. On November 24, 1980, appellant spouses mortgaged the aforementioned titles to appellee bank to secure a loan in the amount of Php400,000.00 (Exhibit "10").<sup>[3]</sup> When appellant spouses defaulted in the payment of the loan, the Bank foreclosed on the real estate mortgage on July 13, 1983. As the sole bidder, the Bank submitted a total bidding price of Php681,843.00. Appellant spouses, however, failed to redeem the foreclosed properties within the redemption period.

In a letter<sup>[4]</sup> (Exh. "A") dated February 27, 1986 addressed to the Bank's liquidator Atty. Renan V. Santos, appellant spouses offered to repurchase the foreclosed properties based on the following proposals:

"In buying back our properties, we humbly submit, for your kind consideration, the following:

a) We will pay Fifty Thousand Pesos (Php50,000.00) to the Bank immediately upon signing of our agreement;

b) We will pay, direct to the Assessor's/Treasurer's Office of Quezon City, Twenty Nine Thousand Six Hundred Ninety Nine Pesos and Eighty Three

Centavos (Php29,699.83) representing accrued real estate taxes from 1979 to 1985, as well as future taxes as they fall due, and

c) We will remit to the Bank at least Thirty Thousand Pesos (Php30,000.00) every quarter beginning \_\_\_\_\_ until the balance is fully paid.

Our proposals are without prejudice to other terms and conditions which you may deem appropriate to protect the Bank's interest. We would, however, plead for leniency and the most liberal terms you can possibly extend to us like condonation/waiver of the interest and penalty charges, as well as attorney's fees or a substantial reduction of said amounts.

We look forward to receiving your reply."

The Bank, however, did not make a reply. Appellant spouses sent another letter<sup>[5]</sup> (Exh. "B") dated March 24, 1986 modifying their initial proposal in that they would pay the Bank the sum of Php80,000.00 immediately upon the signing of the parties' agreement and that they would pay the balance within 18 months on a quarterly basis. Still the Bank did not respond to appellant spouses' request. They sent another letter<sup>[6]</sup> (Exh. "C") dated May 2, 1989 reiterating their proposal to repurchase the foreclosed properties. Still no response from the Bank, appellant spouses sent another letter<sup>[7]</sup> (Exh. "D") dated February 27, 1990 reinforcing the same proposal to redeem the properties.

Finally, appellant spouses received a response from the Bank in a letter<sup>[8]</sup> (Exh. "E") dated June 18, 1990, the pertinent portion of which reads as follows -

"Please be informed that your request was approved by the Liquidator subject to the following terms and conditions:

1. The transaction shall be subject to the prior approval of the PVB Liquidation Court (RTC Br. 39, Manila);
2. The repurchase price shall be Php2,077,395.00, payable within thirty (30) days from receipt of notice of approval;
3. Any advances/expense to be incurred by the bank on subject properties while the repurchase price is not yet fully paid shall accrue to the purchaser with an interest of 12% p.a.
4. The purchaser shall shoulder the cost of evicting squatters on the properties, if there is any; and
5. The covering titles, TCT Nos. T-261801 and T-261158 shall be released only after the prior approval of the PVB Liquidation Court (RTC Br. 39, Manila) and after all the amounts due the bank have been fully paid.

Should you be agreeable to the foregoing terms and conditions, please

return to us the duplicate copy of this letter with your signature on the space provided for the purpose."

In a letter<sup>[9]</sup> (Exh. "F") dated July 16, 1990, appellant spouses made a counter-offer to the Bank's proposal, to wit -

"I am pleased to inform you that I find your Condition Nos. 1, 3, 4 and 5 as acceptable and reasonable. However, may I propose that the repurchase price of TCT No. 261801 is Php999,470.00 based on the following details:

- 25%
- a) down (Php250,000.00)  
payment:
  - Php100,000.00 upon signing of agreement
  - Php100,000.00 after 30 days
  - Php 50,000.00 after 60 days
- b) the balance of Php749,470.00 within two (2) years.

May I request that the above title be immediately released after full payment of the above obligation.

For TCT No. 261158: Being a corporate property, the stockholders have yet to decide on how to repurchase the property.

We hope that you will accept and consider our counter-proposal reasonable."

The Bank did not send a reply to appellant spouses' counter-proposal. The latter took the former's silence that their counter-proposal had been approved. Appellant spouses again sent a letter<sup>[10]</sup> (Exh. "G") dated April 3, 1991 to the Bank with the following message -

"I was informed that my July 16, 1990 letter to the Central Bank of the Philippines, containing the terms and conditions for the repurchase of our house and lot covered by TCT No. 261801, was already approved.

In compliance with my accepted offer, I am sending you Pilipinas Bank Manager's Check No. 000658 dated April 03, 1991 in the amount of ONE HUNDRED THOUSAND PESOS (Php100,000.00) either as a deposit and/or as initial payment for the above purpose.

With this payment and/or deposit, kindly prepare the necessary documents for our signing."

Apparently, the Bank accepted the deposit of Php100,000.00 by appellant spouses

as evinced by PVB Official Receipt No. 15410<sup>[11]</sup> (Exh. "H") dated April 3, 1991 with the following details -

Received  
From:

Mr. Edgardo Cruz

For  
Account  
Of:

Deposit on the approved repurchased  
price of TCT#T261801

Note: Subject to refund if transaction is not  
consummated

Another receipt<sup>[12]</sup> (Exh. "I") in the same amount of Php100,000.00 was also issued on May 29, 1991 with the following details:

Received  
From:

Mr. Edgardo Cruz

For  
Account  
Of:

Partial payment on the repurchase price  
of TCT # 261801 (Note: Subject to  
refund if the transaction is not  
consummated.)

Subsequently thereafter, several official receipts<sup>[13]</sup> (Exhs. "J", "K-3", "L-3" and "M-3") in the amount of Php100,000.00 each were issued by the Bank in Edgardo Cruz's account for the partial payment of repurchase price of TCT No. 261801, to wit:

<b><u>O.R. No.</u></b>	<b><u>Date</u></b>	<b><u>Amount</u></b> <b><u>(Php)</u></b>
15949	July 16, 1991	100,000.00
16186	September 3, 1991	100,000.00
19059	October 28, 1991	100,000.00
16795	January 23, 1992	100,000.00

In addition, Edgardo sent several letters<sup>[14]</sup> (Exhs. "I-1", "K", "L" and "M") to the

Bank dated May 29, 1991, August 26, 1991, October 28, 1991 and January 23, 1992 informing the latter that the checks issued in its favor were in view of appellant spouses' July 16, 1990 letter offering to repurchase the property covered by **TCT NO. 261801** in the amount of Php999,470.00, under the conditions submitted by appellant spouses therein. In a handwritten letter<sup>15</sup> (Exh. "N") dated January 23, 1992, appellant spouses reiterated their desire to repurchase the said property in the aforesaid amount.

Finally, the Bank responded to appellant spouses' January 23, 1992 letter through a letter<sup>[16]</sup> (Exh. "Q") dated April 3, 1992 informing the latter to address their offer to the new management of the Bank in view of the re-opening of the Bank and in order not to preempt the new management in deciding on the matter.

Despite several follow-ups with the Bank, there still was no response from the Bank pertaining to appellant spouses' offer to repurchase the property covered by **TCT NO. 261801**. The Bank eventually re-opened with a new management, and without acting upon appellant spouses' offer, it consolidated in August 1995 the foreclosed titles in its name, prompting appellant spouses to file the instant action for specific performance and damages against the Bank.

In the Bank's answer<sup>[17]</sup> to appellant spouses' complaint, the Bank averred that appellant spouses' counter-offer to repurchase the foreclosed properties was unacceptable to the Bank. Thus, it decided to consolidate the foreclosed properties in its name. While the Bank may have received deposits from appellant spouses, the same is not tantamount to an affirmation of the repurchase agreement. The Bank continued to receive the deposits from appellant spouses with the understanding that the latter would come up with a better offer or at least abide with the conditions it laid down in its June 18, 1995 letter. The Bank furthered that appellant spouses failed to meet the said conditions. Instead of paying the amount of Php2,077,395.00, they paid only Php600,000.00 in a span of almost one year. In view of the notation in the official receipts issued by the Bank stating that the deposit made by appellant spouses is subject to refund if transaction is not consummated, the Bank is ready and willing to refund appellant spouses' total deposit of Php600,000.00.

In the appealed decision dated June 22, 2009, the trial court summarized the testimonial evidence of both parties as follows -

"On June 28, 1999, the pre-trial stage was terminated. Thereafter, trial ensued. The first witness presented was Edgardo L. Cruz. Some of the matters that he intended to testify on were stipulated upon by the parties: He and his co-petitioner wife obtained a loan from PVB. They failed to pay their obligation when it became due, which resulted in the foreclosure of the mortgage on the subject lots. They also failed to redeem the same within the redemption period. The properties were sold at public auction and defendant bank was declared as the highest bidder. The Sheriff's Sale was registered. Thereafter, they requested the bank to allow them to repurchase. It took sometime before defendant bank consolidated the titles of the auctioned properties in its name.

The witness testified that after the mortgage were foreclosed by the