

PACIFICO CONCEPCION, PETITIONER-APPELLANT, VS. RURAL BANK OF CARDONA (RIZAL), INC., RESPONDENT-APPELLEE.

Ponente: DIAMANTE, J.

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DIAMANTE, J.:

Before Us is an appeal under Rule 41 of the Rules of Court seeking to reverse and set aside the Orders dated May 20, 2011[1] and September 28, 2012[2] of the Binangonan, Rizal Regional Trial Court, Branch 70, in Civil Case No. 07-031.

In view of respondent-appellee's Manifestation and Compliance filed through registered mail on September 4, 2014,[3] the same is hereby noted and considered as substantial compliance with Our Resolution dated August 6, 2014.[4] Considering further that no reply[5] has been filed on respondent-appellee's Brief, petitioner-appellant is deemed to have waived the filing thereof and thus, the case at bench is hereby declared submitted for decision.

The antecedent facts:

On September 9, 1996, petitioner-appellant obtained a loan for Php350,000.00 from respondent-appellee Rural Bank of Cardona (Rizal), Inc., with interest at the rate of 28% per annum, secured by a Real Estate Mortgage[6] over his parcel of land located at Binangonan, Rizal covered by TCT No. M-52013.

On November 12, 2001, petitioner-appellant executed a Promissory Note[7] for Php175,400.00, payable within 180 days, with interest at 25% per annum after the respondent-appellee granted his request for a restructuring of his outstanding loan balance of Php175,400.00. Upon maturity of the restructured loan on May 10, 2002, petitioner-appellant was not able to pay in full his indebtedness.

Consequently, on March 1, 2005, respondent-appellee filed a Petition for Extrajudicial Foreclosure of Real Estate Mortgage with the Binangonan, Rizal RTC, docketed as File No. 05-041.[8] After due publication, the foreclosed property was sold at public auction for Php304,122.00 by the Ex-Officio Sheriff of Binangonan, Rizal RTC on May 13, 2005 and a Certificate of Sale dated June 16, 2005[9] was issued to respondent-appellee, being the highest bidder. Title and ownership of the property were consolidated in its name after petitioner-appellant failed to redeem his foreclosed property within the one-year redemption period.

Sometime in July 2007, petitioner-appellant went to respondent-appellee to inquire on how to buy back his foreclosed property. Respondent-appellee's General Manager then gave him his Statement of Account reflecting a total payable amount of Php969,584.93 as of June 30, 2007.[10]

On July 24, 2007, petitioner-appellant sent a letter[11] to respondent-appellee's Board of Directors offering to buy back the foreclosed property for Php430,432.08, payable within 90 days. Respondent-appellee, through its President, declined his offer and instead made a counter-offer by giving him a special discount of Php200,000.00, thus reducing his total payables to Php769,584.93.[12]

Finding the counter-offer unconscionable, petitioner-appellant decided to file a Petition for Annulment of Extrajudicial Foreclosure Sale with Damages against respondent-appellee before the Binangonan, Rizal RTC on

October 17, 2007.

After petitioner-appellant had formally rested his case, respondent-appellee filed a "Motion for Leave to File and Admit Demurrer to Evidence" and "Motion to Dismiss by Way of Demurrer to Evidence." It anchored its Demurrer to Evidence on the following grounds: 1) petitioner-appellant failed to prove any cause of action against it because he failed to show proof that the extrajudicial foreclosure was tainted with fraud, and 2) petitioner-appellant's cause of action, if any, has prescribed.

Petitioner-appellant opposed the above demurrer by averring that he had clearly established his cause of action. The collective acts of respondent-appellee before, during and after the filing of the petition for extrajudicial foreclosure demonstrated a scheme to defraud him. It allegedly imposed excessive interests on his loan, unilaterally increased the interest rate, and failed to notify him of the auction sale. Said petition also was filed within the prescriptive period on October 17, 2007 or within two (2) years after respondent-appellee had allegedly caused the publication and notice of the extrajudicial foreclosure sometime in 2005. Respondent-appellee's Motion to Dismiss by Way of Demurrer to Evidence must be treated as a mere scrap of paper for its counsel violated Bar Matter No. 1922 by failing to indicate in said motion his Mandatory Continuing Legal Education (MCLE) compliance number.

After finding that petitioner-appellant had failed to show a right to the relief demanded, the Binangonan, Rizal RTC, Branch 70, in the assailed Order dated May 20, 2011, resolved to grant the respondent-appellee's Demurrer to Evidence and denied the Petition for Annulment of Extrajudicial Foreclosure Sale for lack of merit.

Petitioner-appellant moved for reconsideration of the aforesaid Order alleging, among others, that respondent-appellee had committed fraud because it failed to comply with the last provision[13] of the Certificate of Sale and reiterated respondent-appellee's counsel's non-compliance with Bar Matter No. 1922.

In the Order dated September 28, 2001, the lower court denied petitioner-appellant's motion for lack of merit. Hence, the instant appeal alleging that the lower court erred:

- a) ... in dismissing the petition for annulment of extrajudicial foreclosure sale with damages for lack of merit.
- b) in admitting respondent's Demurrer (sic) to evidence considering the latter's non-compliance with Bar Matter No. 1922.

We are not persuaded.

Jurisprudence dictates that a demurrer to evidence is a motion to dismiss on the ground of insufficiency of evidence and is presented after the plaintiff rests his case. It is an objection by one of the parties in an action to the effect that the evidence which his adversary has produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The evidence contemplated by the rule on demurrer is that which pertains to the merits of the case.[14]

After carefully examining the facts and evidence presented, We believe that the lower court did not err in dismissing the petition for annulment of extrajudicial foreclosure sale on the ground that petitioner-appellant had simply failed to show that he is entitled to the relief demanded that would warrant the denial of respondent-appellee's demurrer to evidence. He simply failed to clearly establish that the extrajudicial foreclosure proceedings was tainted with fraud or that respondent-appellee, the Sheriff, or the Clerk of Court did not comply with the procedures for foreclosure under Act No. 3135,[15] as amended.

The prevailing jurisprudence in foreclosure proceedings is that foreclosure proceedings have in their favor the presumption of regularity and the burden of evidence to rebut the same is on the petitioner-appellant. A mortgagor

who alleges absence of a requisite has the burden of establishing that fact.[16]

Petitioner-appellant's allegation that he was not duly notified of the foreclosure sale and the date of redemption thereof is contradicted by his own admission that he failed to inform respondent-appellee in writing of his new address when he went out of the country and resided in Toronto, Canada from 2002 up to 2006.[17] As carefully observed by the lower court:

"Petitioner's own evidence, particularly the third paragraph of the Certificate of Sale dated June 16, 2005 (Exh. F') [sic], also shows that constructive notice may be deemed to have been given herein petitioner only sometime before May 13, 2005, the date of the sale, via the sending of notice to him through registered mail, publication, and posting of the Notice of Sale. Petitioner denies that he actually received said notice through mail, but his own testimony shows that he then moved out of his two residences of record with the bank, and had gone abroad (Toronto, Canada) without giving written notice to the bank. Service of the mail matter to him may then be deemed completed. Petitioner may be deemed to have acquired constructive notice of the foreclosure sale only then, sometime before May 13, 2005, a little more than two years before the filing of the instant petition.

XXX XXX XXX

Under said item 7 [of the Deed of Real Estate Mortgage], or as much of it as can be read from the copy of the document offered in evidence, the notification was to be made at the address of the mortgagor given in the said mortgage deed 'or at the address that may (t)hereafter be given in writing by the Mortgagor to the Mortgagee' (Exh. 'A'; Records, p. 10). The deed executed on September 9, 1996 gives petitioner-mortgagor's address at '8 Col. Guido St. Ext. Binangonan, Rizal.' Petitioner admitted in court that he moved out of the said address as (sic) No. 8 Col. Guido Extension, Binangonan, Rizal. He stayed in February 1999 and moved to No. 15 Ramirez St., Corner Long Road, Gordon Heights, Olongapo City. He informed the bank of his transfer in writing before he moved in February 1999. Thereafter, sometime in 2002, he left his address in Olongapo and was in Toronto, Canada from 2002 to 2006. Petitioner admitted that he did not inform respondent bank of his move to Canada or of his Philippine address in writing. The most he could say was that he mentioned verbally to Ms. Brenda Francisco, presumably connected with the bank, that he was about to leave for Canada. The failure to notify him of the petition for extrajudicial foreclosure or give him personal notice of the auction sale was due to petitioner's own making of failing to inform the bank of his new address in writing." [18] (Emphasis supplied)

Even assuming that no personal notice was served upon petitioner-appellant, Act No. 3135 does not require personal notice to the mortgagor in extrajudicial foreclosure sales.[19] The failure to post the notices in public places would not even render the foreclosure sale invalid as long as the notice of sale is duly published in a newspaper of general circulation. The publication of the notice of sale is sufficient compliance with the statutory requirement on notice- posting.[20] Petitioner-appellant, in the case at bench, did not dispute the fact of publication of the notice of sale. Thus, the presumption of regularity of the foreclosure proceedings stands.

Moreover, non-compliance by respondent-appellee of the last provision of the Certificate of Sale pertaining to the sending of notices of any assessments or taxes to the mortgagor is not a ground for the annulment of the foreclosure sale.

Act No. 3135, as amended, does not require the highest bidder or purchaser to furnish the mortgagor or redemptioner of the foregoing notices of assessment prior to the expiration of redemption. The purpose of furnishing such notices to the mortgagor or redemptioner is only to inform the latter of the actual amount which he should pay in case he chooses to exercise his right of redemption. If no notice is given, the only effect is that the property may be redeemed without paying such assessments or taxes. The failure to furnish copies of the amounts of assessments or taxes which the purchaser may have paid to the mortgagor or redemptioner would not

invalidate the auction sale and the subsequent transfer of title over the property in its favor.[21]

Anent petitioner-appellant's contention that the excessive interest charged on his loan was allegedly calculated by respondent-appellee in order to prevent him from paying his loan and later in redeeming the mortgaged property, We find the same untenable.

The records show that petitioner-appellant failed to present sufficient evidence to support his claim that respondent-appellee had unilaterally escalated the interest rate of the Promissory Note from 25% to 28% per annum in violation of the principle of mutuality of contracts. As aptly noted by the lower court, the evidence showed that the original agreed interest on his long-term loan taken in 1996 for Php350,000.00 was charged with an interest rate of 28% per annum as evidenced by the Real Estate Mortgage dated September 9, 1996. Since he was not able to comply with the terms and conditions of his original loan, he sought to have his outstanding loan balance in the amount of Php175,400.00 restructured with a lower interest rate of 25% per annum, as evidenced by the Promissory Note dated November 12, 2001, which he freely and voluntarily executed.

It was also noted that upon maturity of the loan, petitioner-appellant admittedly failed to fully settle the entire obligation. Although he made payments eight (8) months after the loan matured, or on January 21, 2003, said payments amounting to Php25,673.00 and Php1,327.00[22] were not sufficient to cover his full obligations as part of these payments had to be applied as payments for interests and penalties on the loan. Due to his failure to fully pay his loan, respondent-appellee extrajudicially foreclosed his real estate mortgage. After due notice and publication, the mortgaged property was sold at public auction to respondent-appellee, being the highest bidder. Ownership of the property was consolidated in the name of respondent-appellee after petitioner-appellant failed to redeem the same within one year.

Considering that as early as 2007, respondent-appellee became the new registered owner of the property, petitioner-appellant cannot now complain that the subject property was sold by respondent-appellee in 2009 to a certain Ma. Socorro C. Parungao while the case was pending in the lower court. The registered owner has the right to possess, enjoy and dispose of the property without any limitations other than those imposed by law,[23] or any restraining order or injunctive writ preventing him from selling or disposing the same.

Lastly, as regards the MCLE Compliance of respondent-appellee's counsel, the lower court had noted that during the hearing on the Motion for Leave to File and Admit Demurrer to Evidence on April 26, 2010, the latter's counsel had explained that he had already complied with the third MCLE compliance period as of February 2010 and was only awaiting for the issuance of the certificate when he filed the aforesaid motion. As his third MCLE Compliance Certificate was not yet available, he temporarily made use of the data from his second MCLE Compliance.[24] When respondent-appellee's Reply to the Opposition to the Demurrer to Evidence was filed on June 1, 2010, his third MCLE Compliance was already indicated therein.[25]

WHEREFORE, in view of the foregoing, the appeal is DENIED. The Orders dated May 20, 2011 and September 28, 2012 of the Binangonan, Rizal Regional Trial Court, Branch 70, in Civil Case No. 07-031 are AFFIRMED.

SO ORDERED.

[*]Garcia, (Acting Chairperson), and Sadang, JJ., concur.

[*] Vice J. C. C. Librea-Leagogo oper Raffle dated October 31, 2014

[1] Rollo, pp. 26-34; Records, pp. 176-184

[2] Id. at 35-37; Id. at 209-211

[3] Rollo, pp. 91-94

[4] Id. at 90

[5] Per Judicial Records Division (JRD) Verification Report dated October 8, 2014, Id. at 92 (back page)

[6] Record, p. 109

[7] Id. at 110

[8] Id. at 113-115

[9] Id. at 116-117

[10] Id. at 118-119

[11] Id. at 120

[12] Per letter dated August 13, 2007; Id. at 121

[13] "It is hereby required of the highest bidder that a statement of any amount of assessment or taxes, which may have been paid on account of this purchase and such other liens chargeable of a redemptioner, with PROOF thereof, be submitted within thirty (30) days immediately preceding the expiration of the period of redemption, furnishing the mortgagor a copy thereof, as required by law, for the purpose of computing the actual amount payable by the Mortgagor/Redemptioner in case of redemption." (Emphasis supplied); Id. at 116-117

[14] Daniel B. Celino vs. Heirs of Alejo and Teresa Santiago, G.R. No. 161817, July 30, 2004

[15] "An Act to Regulate the Sale of Property under Special Powers Inserted or Annexed to Real Estate Mortgages", as amended by Act No. 4118 "An Act to Amend Act Numbered Thirty-One Hundred and Thirty-Five, Entitled "An Act To Regulate The Sale of Property Under Special Powers Inserted In Or Annexed To Real-Estate Mortgages" (dated December 7, 1933)

[16] Guillermina Baluyut vs. Eulogio Poblete, et al., G.R. No. 144435, February 6, 2007

[17] TSN dated November 11, 2008, p. 13

[18] Records, pp. 181-182

[19] Philippine National Bank vs. Spouses Franciso and Merced Rabat, G.R. No. 134406, November 15, 2000

[20] Bank of the Philippine Islands (Successor-in-interest of Citytrust Banking Corporation) vs. Evangeline L. Puzon, G.R. No. 160046, November 27, 2009

[21] Guillermina Baluyut vs. Eulogio Poblete, et al., G.R. No. 144435, February 6, 2007 citing Spouses Estanislao, Jr. vs. Court of Appeals, 414 Phil. 509, 519 (2001)

[22] Records, p. 12

[23] Heirs of Rosendo Sevilla Florencio, as represented by Estrellita Florencio-Cruz and Rodrigo R. Florencio vs. Heirs of Teresea Sevilla De Leon, as represented by Valeriana Morente, G.R. No. 149570, March 12, 2004

[24] Records, pp. 209-211

[25] Id. at 161-164

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