SPOUSES ROBERTO CAYUDOT AND DELIA CAYUDOT, PLAINTIFFS-APPELLEES, VS. THE REGISTER OF DEEDS OF TAGUM CITY AND FRANCISCO CANSANA, JR., DEFENDANTS-APPELLANTS.

Ponente: CAMELLO, J.

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CAMELLO, J.:

The defendants-appellants seek the reversal of the Decision[1] of 31 August 2011 of the Regional Trial Court in Civil Case No. 45-2004 entitled “Spouses Roberto Cayudot and Delia Petalino v. Francisco Cansana, Jr. and the Register of Deeds of Tagum City.”

On 4 August 2004 a complaint[2] - for the declaration of nullity of promissory note, real estate mortgage, and extra-judicial foreclosure proceeding with damages ? was filed by the plaintiffs-appellees spouses Roberto Cayudot and Delia Petalino against defendants-appellants private defendant Francisco Cansana, Jr. and public defendants the Deputy Sheriff Jonathan B. Fajardo and Clerk of Court Giselle B. Gonzales-Talion.

On 8 March 2002, the Cayudots allegedly obtained a loan from Francisco in the amount of P150,000.00 with interest at 25% per annum.

A year later, on 8 March 2003, the Cayudots executed a notarized[3] promissory note[4] promising to pay Francisco the amount of P360,000.00 with a monthly interest rate at 7% within a period of six [6] months or until 8 September 2003. The promissory note provides that, in case of default, the unpaid interest would be compounded, that is, added to the balance of the principal amount, and which in turn would earn 3% interest.

On 19 March 2003, as security for the loan, the Cayudots drew a deed of real estate mortgage[5] over a parcel of land covered by Transfer Certificate of Title [TCT] No. 164426[6] located in Babak, Samal Island in favor of Francisco.

The Cayudots defaulted, prompting Francisco to institute extrajudicial foreclosure proceedings[7] on the mortgaged property on 9 June 2004. The auction sale was set on 5 August 2004.[8]

On 4 August 2004, the Cayudots filed the instant complaint[9] to prevent the foreclosure and sale of the mortgaged property on the ground that the mortgage contract failed to embody the true and correct agreement between the parties. The Cayudots averred that they were duped into signing the contract, with the amount of the loan and interest rate left blank, which Francisco filled in subsequently, all by himself.

The Cayudots further contend that the extrajudicial foreclosure proceedings cannot proceed since Francisco was not authorized by the contract to extrajudicially foreclose the property. The complaint was docketed as Civil Case No. 45-2004 and assigned to the Regional Trial Court [RTC] of Panabo City, Branch 4.

On 5 August 2004, the Cayudots filed their opposition to the extrajudicial foreclosure before the Office of the Provincial Sheriff and Clerk of Court.[10]

Despite these filings, the public defendant sheriff proceeded with the scheduled auction sale on 5 August 2004

and sold to Francisco, as the highest bidder, the mortgaged property for P1,007,435.00.[11]

On 6 August 2004, the Cayudots filed an amended complaint[12] to reiterate their opposition against the foreclosure proceeding and auction sale on the ground that the foreclosure was null and void for being contrary to Act No. 3135[13] as amended by Act No. 4118[14] and Republic Act No. 3872[15].

On 9 August 2004, the trial court issued a temporary restraining order.[16] The application for preliminary injunction was heard on 25 August 2004.[17]

On 27 September 2004, the trial court issued an order granting the writ of preliminary injunction conditioned upon plaintiffs posting of a bond in the amount of P1,000,000.00.[18] The Cayudots filed a motion for reconsideration[19] of the order arguing that the amount was excessive and unnecessary. The motion was denied.[20]

On 15 July 2005, Francisco moved to register the certificate of sale because the Cayudots failed to post the P1,000,000.00 bond.[21] The motion was granted in an order dated 9 May 2006.[22]

On 13 August 2010, the Cayudots filed a second amended complaint[23] to include reconveyance of the subject property and cancellation of title. This time, the complaint impleaded only Francisco and the office of the Register of Deeds of Tagum City.

On 31 August 2011, after trial, the lower court rendered a Decision[24] declaring null and void the extrajudicial foreclosure proceedings, as well as the certificate of sale in favor of Francisco, and ordering the reconveyance of the property to the Cayudots. The dispositive reads as follows:

> IN VIEW OF THE FOREGOING, judgment is hereby rendered as follows:
>
> 1. Declaring null and void and without effect the extrajudicial foreclosure conducted in EJF Case No. 18-2004 entitled “Cansana, Jr. v. Roberto and Delia Cayudot” and all proceedings had in connection thereto including but not limited to the issuance of the Certificate of Sale and its registration, the cancellation of TCT no. T-164426 and the corresponding issuance of TCT No. T-260660 in favor the defendant;
>
> 2. Ordering Spouses Roberto and Delia Cayudot to pay defendant Francisco Cansana, Jr. the amount of Php 150,000.00 plus interest thereon at the rate of 12% per annum reckoned from 8 March 2002 until the same is fully paid;
>
> 3. Ordering defendant Francisco Cansana, Jr. to reconvey the subject property to the spouses Roberto and Delia Cayudot; and
>
> 4. Dismissing for lack of factual and legal basis, the other claims of the parties.
>
> Due to the invalid extrajudicial foreclosure proceeding conducted in EJF No. 18-2004 and the distinct possibility that similar deficient applications were likewise unlawfully given due course, let copy of this decision be furnished the Office of the Clerk of Court and Executive Judge for this matter to be appropriately acted upon and addressed.
>
> No costs.
>
> SO ORDERED.[25]

Aggrieved, Francisco filed the instant appeal, where he assigned the following errors:

> 1. THE COURT A QUO GRAVELY ERRED IN GIVING CREDENCE TO PLAINTIFFS CLAIM THAT THE INTEREST ON THE LOAN EXTENDED BY THE DEFENDANT IS 25% PER ANNUM AS NOT 10% PER MONTH AS STIPULATED IN THE REAL ESTATE MORTGAGE AND THE PROMISSORY

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> NOTE.
>
> 2. THE COURT A QUO GRAVELY ERRED IN NOT ADHERING TO WHAT IS AGREED AND STIPULATED IN THE PRE-TRIAL ORDER PARTICULARLY PARAGRAPH 5 AND 7 THEREOF.
>
> 3. THE COURT A QUO GRAVELY ERRED IN ORDERING THE CANCELLATION OF TCT No. 260660 IN THE DEFENDANT'S NAME REVERTING TO ROBERTO CAYUDOT, TCT NO. TCT NO. T-164426.[26]

Notably, the only argument that Francisco pursues in this appeal is the rate of interest; he has become totally silent on his challenge against the extrajudicial sale. Francisco explained that what had been agreed upon was 10% per month, which is generally accepted in rural areas to speedily secure the release of a loan, and that the Cayudots' insistence that it was 25% per annum, without any evidence to substantiate such claim, will not prevail over a notarized deed, as well as the testimony of the Notary Public.

On their part, the Cayudots contend that the extrajudicial foreclosure proceeding and the sale of the property in question under the deed of real estate mortgage are null and void. They reasoned that the mortgage contract does not embody their true agreement for when they signed it, the space provided for the amount of the loan was left blank. They insist that the amount of the loan was for P150,000.00 at the rate of 25% per annum. Nevertheless, even if the trial court did not take into consideration the iniquitous interest, the foreclosure proceedings would still be a nullity because no special power of attorney was attached to or incorporated in the deed authorizing the extrajudicial foreclosure of the mortgaged property.

The appeal is not meritorious.

The trial court declared the extrajudicial foreclosure of 5 August 2004 null and void, and rightly so, on the ground that the deed of real estate mortgage was without a special power of attorney inserted in or attached to it.

The complaint stemmed from an alleged irregular extrajudicial foreclosure of a real estate mortgage constituted on the property of the Cayudots. The Cayudots protested the sale on the ground that the real estate mortgage contract did not contain any stipulation giving the mortgagee the authority to foreclose the mortgage extrajudicially. The sale nevertheless proceeded as scheduled with the mortgagee as the highest bidder.

Proceedings for the extrajudicial foreclosure of real estate mortgage are specially governed by Act 3135,[27] as amended by Act No. 4118. As the title itself suggests and under Section 1 of the Act, extrajudicial foreclosure sales are proper only when so provided under a special power inserted in or attached to the mortgage contract. Section 1 provides —

> Section six of 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," is hereby amended to read as follows:
>
> SEC. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act.

Indeed, a reading of the Deed of Real Estate Mortgage in this case would show no special power authorizing Francisco as mortgagee to extrajudicially foreclose the mortgage in case the Cayudots defaulted in their loan

obligation.

Moreover, in Administrative Order No. 3 series of 1984 (re: Procedure in Extrajudicial Foreclosure of Mortgage),[28] it is the sheriff's duty to examine if the application for extrajudicial foreclosure of real estate mortgage has complied with the requirements under Section 4 of Act 3135, as amended. However, amendments had already been introduced to Administrative Order No. 3 by making it the specific duty of the Clerk of Court to examine applications for extrajudicial foreclosure of mortgages.[29] The very recent amendment is now provided for in Circular No. 7-2002[30] 13 issued on January 22, 2002 and which became effective on April 22, 2002. Sections 1 and 2(a) of said Circular specifically state that:

> Sec. 1. All applications for the extrajudicial foreclosure of mortgage whether under the direction of the Sheriff or a notary public pursuant to Act No. 3135, as amended, and Act No. 1508, as amended shall be filed with the Executive Judge, through the Clerk of Court, who is also the Ex-Officio Sheriff. (A.M. No. 99-10-05-0, as amended, March 1, 2001).
>
> Sec. 2. Upon receipt of the application, the Clerk of Court shall:
>
> a. Examine the same to insure that the special power of attorney authorizing the extrajudicial foreclosure of the real property is either inserted into or attached to the deed of real estate mortgage. (Act No. 3135, Sec. 1, as amended)

In the case at bar, the Cayudots complaint protesting the foreclosure sale was dated 2 August 2004 and received two (2) days later. In addition, on the morning of 5 August 2004, they also filed their opposition to the foreclosure proceeding and auction sale with the office of the Provincial Sheriff and the Clerk of Court. The foreclosure sale was scheduled on 5 August 2004. It would not have cost the Clerk of Court much to have considered the question more thoroughly either by perusing the real estate mortgage contract herself, which clearly showed that there was in fact no special power inserted authorizing an extrajudicial foreclosure, or else, brought the protest to the attention of her superiors and solicited their help.

The Clerk of Court did neither. Consequently, the questioned extrajudicial foreclosure of real estate mortgage and sale are void.

We now resolve the issue of whether the rate of interest and surcharge on the obligation of the Cayudots to Francisco are legal.

Originally, the Cayudots obtained a loan of P150,000.00 with 7% monthly interest for six [6] months. Failure to pay would mean 10% surcharge on the principal loan for every month of default. Regrettably, the Cayudots failed to pay, thus another promissory note was executed by them in favor of Francisco. This time, the amount was for P360,000.00 which would bear an interest of 7% monthly for six [6] months and a surcharge of 10% on the principal loan for every month of default.

We affirm the ruling of the trial court, striking down as invalid the 10% surcharge per month - which is, effectively, 120% per annum - stipulated in the promissory notes dated 8 March 2002 and 8 March 2004. The legal rate of interest of 12% per annum will thus apply after the maturity dates of the notes until full payment of the entire amount due. This is in line with the ruling in Ruiz v. Court of Appeals,[31] thus:

> The foregoing rates of interests and surcharges are in accord with Medel vs. Court of Appeals, Garcia vs. Court of Appeals, Bautista vs. Pilar Development Corporation, and the recent case of Spouses Solangon vs. Salazar. This Court invalidated a stipulated 5.5% per month or 66% per annum interest on a P500,000.00 loan in Medel and a 6% per month or 72% per annum interest on a P60,000.00 loan in Solangon for being excessive, iniquitous, unconscionable and exorbitant. In both cases, we reduced the interest rate to 12% per annum. We held that while the Usury Law has been suspended by Central Bank Circular No. 905, s. 1982, effective on

> January 1, 1983, and parties to a loan agreement have been given wide latitude to agree on any interest rate, still stipulated interest rates are illegal if they are unconscionable. Nothing in the said circular grants lenders carte blanche authority to raise interest rates to levels which will either enslave their borrowers or lead to a hemorrhaging of their assets. On the other hand, in Bautista vs. Pilar Development Corp., this Court upheld the validity of a 21% per annum interest on a P142,326.43 loan, and in Garcia vs. Court of Appeals, sustained the agreement of the parties to a 24% per annum interest on an P8,649,250.00 loan. It is on the basis of these cases that we reduce the 36% per annum interest to 12%. An interest of 12% per annum is deemed fair and reasonable. While it is true that this Court invalidated a much higher interest rate of 66% per annum in Medel and 72% in Solangon it has sustained the validity of a much lower interest rate of 21% in Bautista and 24% in Garcia. We still find the 36% per annum interest rate in the case at bar to be substantially greater than those upheld by this Court in the two (2) aforecited cases.

FOR THE REASONS STATED, the decision of the Regional Trial Court of 31 August 2011 in Civil Case No. 45-2004 is AFFIRMED.

SO ORDERED.

Inting and Perez, JJ., concur.

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[1] Rollo, pp. 22-30.

[2] Records, pp. 1-6.

[3] Atty. Rodolfton S.J. De Leon.

[4] Records, p. 8.

[5] Records, pp. 9-10.

[6] Records, p. 66.

[7] Records, pp. 12-14.

[8] Records, p. 16.

[9] Records, pp. 1-6.

[10] Records, pp. 33-34.

[11] Records, p. 35.

[12] Records, pp. 17-22.

[13]An Act to Regulate the Sale of Property under Special Powers Inserted In or Annexed to Real-Estate Mortgages

[14] 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."

[15] An Act to Amend Sections Forty-Four, Forty-Eight and One Hundred Twenty of Commonwealth Act Numbered One Hundred Forty-One, as Amended, Otherwise Known as the "Public Land Act", and for Other Purposes

[16] Records, pp. 37-38.

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[17] Records, p. 49.

[18] Records, pp. 81-82.

[19] Records, pp. 83-85.

[20]Records, p. 96.

[21] Records, p. 97.

[22] Records, p. 117.

[23] Record, pp. 210-214.

[24] Rollo, pp. 22-30.

[25] Rollo, p. 29.

[26] Rollo, p. 15.

[27]

ACT NO. 3135
AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES

SECTION 1. When a sale is made under a special power inserted in or attached to any real-estate mortgage hereafter made as security for the payment of money or the fulfillment of any other obligation, the provisions of the following sections shall govern as to the manner in which the sale and redemption shall be effected, whether or not provision for the same is made in the power.

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 the subject of 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.

SECTION 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city.

SECTION 4. The sale shall be made at public auction, between the hours of nine in the morning and four in the afternoon; and shall be under the direction of the sheriff of the province, the justice or auxiliary justice of the peace of the municipality in which such sale has to be made, or a notary public of said municipality, who shall be entitled to collect a fee of five pesos for each day of actual work performed, in addition to his expenses.

SECTION 5. At any sale, the creditor, trustee, or other persons authorized to act for the creditor, may participate in the bidding and purchase under the same conditions as any other bidder, unless the contrary has been expressly provided in the mortgage or trust deed under which the sale is made.

SECTION 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption

shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act.

SECTION 7. This Act shall take effect on its approval.

Approved: March 6, 1924

[28] Administrative Order No. 3, Series of 1984, pertinently provides the following:

> TO: All Executive Judges and Clerks of Court of the Regional Trial Courts
> SUBJECT: Procedure in Extrajudicial Foreclosure of Mortgage
>
> xxx xxx xxx
>
> 1. All applications for extrajudicial foreclosure of mortgage under Act 3135, as amended by Act 4118, and Act 1508, as amended, shall be filed with the Executive Judge, through the Clerk of Court who is also the Ex-Oficio Sheriff;
> 2. Upon receipt of an application for extrajudicial foreclosure of mortgage, it shall be the duty of the Office of the Sheriff to:
>
> a) receive and docket said application and to stamp the same with the corresponding file number and date of filing;
> b) collect the filing fees therefor and issue the corresponding official receipt;
> c) examine, in case of real estate mortgage foreclosure, whether the applicant has complied with all the requirements before the public auction is conducted under its direction or under the direction of a notary public, pursuant to Section 4 of Act 3135, as amended;

xxx xxx xxx.

[29] In Administrative Matter No. 99-10-05-0 dated December 14, 1999 as amended March 1, 2001 and further amended August 7, 2001, it is pertinently provided that:

> 1. All applications for extrajudicial foreclosure of mortgage whether under the direction of the sheriff or a notary public, pursuant to Act 3135, as amended by Act 4118, and Act 1508, as amended, shall be filed with the Executive Judge, through the Clerk of Court, who is also the Ex-Officio Sheriff.
>
> 2. Upon receipt of an application for extrajudicial foreclosure of mortgage, it shall be the duty of the Clerk of Court to:
>
> xxx xxx xxx
>
> c) examine, in case of real estate mortgage foreclosure, whether the applicant has complied with all the requirements before the public auction is conducted under the direction of the sheriff or a notary public, pursuant to Sec. 4 of Act 3135, as amended;

xxx xxx xxx.

[30] Guidelines for the Enforcement of Supreme Court Resolution of December 14, 1999 in Administrative Matter No. 99-10-05-0 (re Procedure in Extrajudicial Foreclosure of Mortgage), as amended by the Resolutions dated January 30, 2001 and August 7, 2001.

[31] 449 Phil. 419 (2003).

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