

JOSE ILETO, PLAINTIFF-APPELLANT, VS. RIZAL COMMERCIAL BANKING CORPORATION, DEFENDANT-APPELLEE.

CV No. 88634, January 31, 2008

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Court of Appeals

Plaintiff appeals from the Order[1] dated June 26, 2006 of the Regional Court, Branch 22 of the City of Malolos, Bulacan in Civil Case No. 760-M-2004 for Annulment of Title, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, the Motion to Dismiss filed by the defendant Rizal Commercial Banking.

Corporation is hereby GRANTED. This case is hereby DISMISSED for failure of the plaintiff's complaint to state a cause of action.

SO ORDERED."

The facts:

On September 11, 1996, appellant obtained a loan from the appellee in the amount of P3,000,000.00[2] secured by a real estate mortgage[3] over appellant's house and lot covered by TCT No. T-93642 with an area of 346 square meters situated at Baliuag, Bulacan. Under the Promissory Note's Schedule of Payments, the amount of P3,000,000.00 shall be payable in 15 years or -

"180 successive monthly installments starting on October 20, 1996 and payable every 20th day of the month as follows:

- 1) Six (6) level monthly installments of P46,170.13;
- 2) Installments thereafter shall be computed and negotiable periodically based on loan agreement."[*]

Appellant also agreed to pay a penalty interest of 36% per annum on the amount due and unpaid in case of default.[4] Before the maturity of the first loan, appellant borrowed an additional P420,000.00 from the appellee secured by the same real estate mortgage.[5]

On December 1, 2004, appellant filed the instant Complaint claiming that he had been faithful in the payment of monthly amortizations for a continuous period of one year until appellee, without notice, increased by almost 40% the original stipulated interest on the loan; that he opposed the imposition of the increased interest but the appellee ignored his opposition; that when he tendered the corresponding amortizations applying the original rate of interest, appellee refused to accept the same causing his monthly amortizations to accumulate and the subsequent foreclosure of his property. Appellant also claimed that there were irregularities attendant to the conduct of the foreclosure sale, to wit: 1) lack of notice of sale to the mortgagor, 2) absence of an affidavit of the sheriff attesting to the publication requirement of the foreclosure sale, and 3) non-posting of the notice of sale in the barangay where the mortgaged property is located; that the mortgaged property with a combined assessed value[6] of P68,590.00 was sold at public auction for a price exceedingly higher than the true obligation of the appellant; and

that title to the mortgaged property was consolidated in appellee's name.

On March 11, 2005, appellee bank filed a Motion to Dismiss on the ground of failure to state a cause of action alleging that personal notice to the mortgagor, the affidavit of the sheriff on compliance with the publication requirement, and the posting of the notice in the barangay where the property is situated are not required under Act No. 3135[7]. Appellee attached the Affidavit of Publication executed by the Publisher/Editor of Sun Star Mabuhay Jose L. Pavia certifying that the Notice of Sheriff's Sale was published in Sun Star Mabuhay on September 27, October 4 and 11, 1998. The Notice of Sheriff's Sale[8] stated that appellant's indebtedness amounted to P4,132,091.04 as of April 15, 1998; and that the public auction would take place on October 29, 1998 at 10:00 a.m. in front of the Office of the Ex-Officio Sheriff of Bulacan.

Appellant filed an Opposition to the Motion to Dismiss[9] dated June 23, 2005 maintaining that his Complaint stated a cause of action as his property right was violated by the wrongful act of the defendant in foreclosing his property for an amount exceedingly higher than that stipulated in the contract; that the foreclosure conducted by the sheriff was not valid; and that there are facts alleged in the Complaint requiring trial on the merits.

On the June 26, 2006, the trial court rendered the appealed Order dismissing the instant Complaint for failure to state a cause of action. The trial court ratiocinated that under Act 3135, personal notice to the mortgagor, the affidavit of the sheriff and the posting of the notice of sale in the barangay are not requirements of a valid foreclosure.[10]

On June 21, 2006, appellant filed a Motion for Reconsideration[11] in effect modifying his cause of action by stating that appellee proceeded with the foreclosure of the real estate mortgage without furnishing him a demand letter that his loan was due and demandable; and that no notice of sale was posted in the locality where the mortgaged property is located.

On November 16, 2006, the trial court issued an Order denying appellant's Motion for Reconsideration. The trial court held that appellant's allegation that he was not furnished a demand letter could not be passed upon as the same was not alleged in his Complaint; and that in determining the existence of a cause of action, only the allegations in the Complaint must be considered.[12]

Hence, this appeal[13] with the following assignment of errors:

I.

THE TRIAL COURT ERRED IN FINDING THAT THE COMPLAINT STATES NO CAUSE OF ACTION.

II.

THE TRIAL COURT ERRED IN FINDING THAT DEFENDANT-APPELLEE COMPLIED WITH THE PROCEDURAL REQUIREMENTS OF FORECLOSURE UNDER ACT 3135.

The appeal lacks merit.

Appellant contends that his Complaint stated a cause of action as the unilateral act of appellee in increasing the interest rate violated the rule on mutuality of contract under Article 1308 of the Civil Code; and that the foreclosure was void because it failed to comply with the procedural requirements of the law.

Cause of action is defined as the act or omission by which a party violates a right of another.[14] It has three elements: (1) a right existing in favor of the plaintiff, (2) a duty on the part of the defendant to respect the right of the plaintiff, and (3) a breach of the defendant's duty.[15] A perusal of the Complaint shows that appellant is attacking the validity of the foreclosure sale for its failure to comply with procedural requirements allegedly laid down by the law, thus:

"7. That in the extra-judicial foreclosure of the real estate mortgage there were procedural infractions committed by the foreclosing officer foremost of which is the lack of proper service of notice of sale to the mortgagor, the plaintiff herein. * * *

8. That records of foreclosure sale of the mortgaged property shows that there is no affidavit executed by the sheriff conducting the sale attesting to the compliance to the publication requirement in a foreclosure sale. * *

9. That there is also an insufficient compliance on the posting requirement in an extra-judicial foreclosure of a real estate mortgage as there is no showing from the records of foreclosure proceedings that proper notice of sale was posted in the barangay where the mortgaged property is located." [16]

Act. No. 3135, as amended, governing extrajudicial foreclosure of mortgages on real property is specific with regard to the posting and publication requirements of the notice of sale, to wit:

"Sec. 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."

From the foregoing, what Act No. 3135 requires are only: (1) the posting of the notice of sale in three public places of the municipality or city where the property is situated; and, (2) the publication of the same in a newspaper of general circulation. Clearly, a personal notice of the sale to the mortgagor or a sheriff's affidavit attesting to the compliance with the publication requirement or the posting of the notice of sale in the barangay where the mortgaged property is located are not required for a valid extrajudicial foreclosure sale of real property. Moreover, appellant has the burden of presenting evidence that the sheriff failed to post the notices of sale. In the absence of contrary evidence, the presumption prevails that the sheriff performed his official duty of posting the notices of sale. The non-execution of the certificate of posting cannot nullify the foreclosure of the real estate mortgage. [17] As regards the requirement of publication, it is indisputable that appellee published the notice of auction sale as evidence by the Affidavit of Publication executed by the Editor of Sun Star Mabuhay. [18]

Appellant likewise asserts that he had been faithful in the payment of his monthly amortizations until appellee arbitrarily increased the interest on his loan leading to the accumulation of his indebtedness and the subsequent foreclosure of his property; and that when he tendered the corresponding amortizations applying the original interest, appellee refuse to accept the same. Under the law, if the creditor to whom tender of payment has been made refuses without just cause to accept it, the debtor shall be released from responsibility by the consignment of the thing or sum due. [19] Tender of payment does not by itself produce legal payment unless it is completed by consignment. [20] There is no allegation that plaintiff made the necessary consignment. Hence, appellant can not claim that the foreclosure was premature or procedurally inferior.

It is a settled rule that in a real estate mortgage, when the obligation is not paid when due, the mortgagee has the right to foreclose the mortgage and to have the property seized and sold with the view of applying the proceed to the payment of the obligation. The essence of a contract of mortgage indebtedness is that a property has been identified or set apart from the mass of the property of the debtor-mortgagor as security for the payment of money or the fulfillment of an obligation to answer the amount of indebtedness in case of default of payment. [21]

In sum, the trial court did not err when it dismissed appellant's Complaint for failure to state a cause of action. The third element which is a breach of the defendant's duty to respect the right of the plaintiff is wanting as the extrajudicial foreclosure of the real estate mortgage in the instant case suffers from no procedural infirmity.

WHEREFORE, there being no reversible error in the appealed Decision, the appeal is denied and the Decision

dated June 26, 2006 of the RTC is AFFIRMED.

SO ORDERED.

Bersamin and Perlas-Bernabe, JJ., concur.

[1] pp. 56-57, Record.

[2] Non-Negotiable Promissory Note, p.6, Records.

[3] pp. 7-8, Records. Promissory Note, supra.

[4] p. 7, Records.

[5] Complaint, par. 3, p. 3, Record.

[6] Tax Declaration of Real Property, pp. 9-10, Record.

[7] "An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real-Estate Mortgages."

[8] p. 37, Records.

[9] pp. 45-46, Record.

[10] pp. 56-57, Record.

[11] pp. 63-67, Record.

[12] pp. 89-90, Record.

[13] Notice of Appeal, pp. 96-97, Record.

[14] Section 2, Rule 2, Rules of Civil Procedure.

[15] Luzon Development Bank vs. Conquilla, 470 SCRA 533.

[16] Complaint, p. 4, Record.

[17] Development bank of the Philippines vs. Court of of Appeals, 403 SCRA 460.

[18] supra.

[19] Article 1256, Civil Code.

[20] Cannu vs. Galang, 459 SCRA 80.

[21] China Banking Corporation vs. Court of of Appeals, 265 SCRA 327

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