

**RAOUL S.V. BONNEVIE AND HONESTO V. BONNEVIE, PETITIONERS,
VS. THE HONORABLE COURT OF APPEALS AND THE PHILIPPINE
BANK OF COMMERCE, RESPONDENTS.**

G.R. No. L-49101. October 24, 1983

Ponente: GUERRERO, J.

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GUERRERO, J.:

Petition for review on certiorari seeking the reversal of the decision of the defunct Court of Appeals, now Intermediate Appellate Court, in CA-G.R. No. 61193-R, entitled "Honesto Bonnevie vs. Philippine Bank of Commerce, et al.," promulgated August 11, 1978[1] as well as the Resolution denying the motion for reconsideration.

The complaint filed on January 26, 1971 by petitioner Honesto Bonnevie with the Court of First Instance of Rizal against respondent Philippine Bank of Commerce sought the annulment of the Deed of Mortgage dated December 6, 1966 executed in favor of the Philippine Bank of Commerce by the spouses Jose M. Lozano and Josefa P. Lozano as well as the extrajudicial foreclosure made on September 4, 1968. It alleged among others that (a) the Deed of Mortgage lacks consideration and (b) the mortgage was executed by one who was not the owner of the mortgaged property. It further alleged that the property in question was foreclosed pursuant to Act No. 3135 as amended, without, however, complying with the condition imposed for a valid foreclosure. Granting the validity of the mortgage and the extrajudicial foreclosure, it finally alleged that respondent Bank should have accepted petitioner's offer to redeem the property under the principle of equity and justice.

On the other hand, the answer of defendant Bank, now private respondent herein, specifically denied most of the allegations in the complaint and raised the following affirmative defenses: (a) that the defendant has not given its consent, much less the requisite written consent, to the sale of the mortgaged property to plaintiff and the assumption by the latter of the loan secured thereby; (b) that the demand letters and notice of foreclosure were sent to Jose Lozano at his address; (c) that it was notified for the first time about the alleged sale after it had foreclosed the Lozano mortgage; (d) that the law on contracts requires defendant's consent before Jose Lozano can be released from his bilateral agreement with the former and doubly so, before plaintiff may be substituted for Jose Lozano and Alfonso Lim; (e) that the loan of P75,000.00 which was secured by mortgage, after two renewals remain unpaid despite countless reminders and demands; (f) that the property in question remained registered in the name of Jose M. Lozano in the land records of Rizal and there was no entry, notation or indication of the alleged sale to plaintiff; (g) that it is an established banking practice that payments against accounts need not be personally made by the debtor himself; and (h) that it is not true that the mortgage, at the time of its execution and registration, was without consideration as alleged because the execution and registration of the securing mortgage, the signing and delivery of the promissory note and the disbursement of the proceeds of the loan are mere implementation of the basic consensual contract of loan.

After petitioner Honesto V. Bonnevie had rested his case, petitioner Raoul S.V. Bonnevie filed a motion for

intervention. The intervention was premised on the Deed of Assignment executed by petitioner Honesto Bonnevie in favor of petitioner Raoul S.V. Bonnevie covering the rights and interests of petitioner Honesto Bonnevie over the sub-ject property. The intervention was ultimately granted in order that all issues be resolved in one proceeding to avoid multiplicity of suits.

On March 29, 1976, the lower court rendered its decision, the dispositive portion of which reads as follows:

"WHEREFORE, all the foregoing premises considered, judgment is hereby rendered dis-missing the complaint with costs against the plaintiff and the intervenor."

After the motion for reconsideration of the lower court's decision was denied, petitioners appealed to respondent Court of Appeals assigning the following errors:

1. The lower court erred in not finding that the real estate mortgage executed by Jose Lozano was null and void;
2. The lower court erred in not finding that the auction sale made on August 19, 1968 was null and void;
3. The lower court erred in not allowing the plaintiff and the intervenor to redeem the property;
4. The lower court erred in not finding that the defendant acted in bad faith; and
5. The lower court erred in dismissing the complaint.

On August 11, 1978, the respondent court promulgated its decision affirming the decision of the lower court, and on October 3, 1978 denied the motion for reconsideration. Hence, the present petition for review.

The factual findings of respondent Court of Appeals being conclusive upon this Court, We hereby adopt the facts found by the trial court and found by the Court of Appeals to be consistent with the evidence adduced during trial, to wit:

"It is not disputed that spouses Jose M. Lozano and Josefa P. Lozano were the owners of the property which they mortgaged on December 6, 1966, to secure the payment of the loan in the principal amount of P75,000.00 they were about to obtain from defendant-appellee Philip-pine Bank of Commerce; that on December 8, 1966, they executed in favor of plaintiff-appellant the Deed of Sale with Assumption of Mortgage, for and in consideration of the sum of P100,000.00, P25,000.00 of which amount being payable to the Lozano spouses upon the execution of the document, and the balance of P75,000.00 being payable to defendant-appellee; that on December 6, 1966, when the mortgage was executed by the Lozano spouses in favor of defendant-appellee, the loan of P75,000.00 was not yet received by them, as it was on December 12, 1966 when they and their co-maker Alfonso Lim signed the promissory note for that amount; that from April 28, 1967 to July 12, 1968, plaintiff-appellant made pay-ments to defendant-appellee on the mortgage in the total amount of P18,944.22; that on May 4, 1968, plaintiff-appellant assigned all his rights under the Deed of Sale with Assump-tion of Mortgage to his brother, intervenor Raoul Bonnevie; that on June 10, 1968, defen-dant-appellee applied for the foreclosure of the mortgage, and notice of sale was published in the Luzon Weekly Courier on June 30, July 7, and July 14, 1968; that auction sale was con-ducted on August 19, 1968, and the property was sold to defendant-appellee for P84,387.00; and that offers from plaintiff-appellant to repurchase the property failed, and on October 9, 1969, he caused an adverse claim to be annotated on the title of the property." (Decision of the Court of Appeals, p. 5).

Presented for resolution in this review are the following issues:

I

Whether the real estate mortgage executed by the spouses Lozano in favor of respondent bank was validly and legally executed.

II

Whether the extrajudicial foreclosure of the said mortgage was validly and legally effected.

III

Whether petitioners had a right to redeem the foreclosed property.

IV

Granting that petitioners had such a right, whether respondent was justified in refusing their offers to repurchase the property.

As clearly seen from the foregoing issues raised, petitioners' course of action is three-fold. They primarily attack the validity of the mortgage executed by the Lozano spouses in favor of respondent Bank. Next, they attack the validity of the extrajudicial foreclosure and finally, appeal to justice and equity. In attacking the validity of the deed of mortgage, they contended that when it was executed on December 6, 1966, there was yet no principal obligation to secure as the loan of P75,000.00 was not received by the Lozano spouses "so much so that in the absence of a principal obligation, there is want of consideration in the accessory contract, which consequently impairs its validity and fatally affects its very existence." (Petitioners' Brief, par. 1, p. 7).

This contention is patently devoid of merit. From the recitals of the mortgage deed itself, it is clearly seen that the mortgage deed was executed for and on condition of the loan granted to the Lozano spouses. The fact that the latter did not collect from the respondent Bank the consideration of the mortgage on the date it was executed is immaterial. A contract of loan being a consensual contract, the herein contract of loan was perfected at the same time the contract of mortgage was executed. The promissory note executed on December 12, 1966 is only an evidence of indebtedness and does not indicate lack of consideration of the mortgage at the time of its execution.

Petitioners also argued that granting the validity of the mortgage, the subsequent renewals of the original loan, using as security the same property which the Lozano spouses had already sold to petitioners, rendered the mortgage null and void.

This argument failed to consider the provision[2] of the contract of mortgage which prohibits the sale, disposition of, mortgage and encumbrance of the mortgaged properties, without the written consent of the mortgagee, as well as the additional proviso that in spite of said stipulation, the mortgaged property is sold, the vendee shall assume the mortgage in the terms and conditions under which it is constituted. These provisions are expressly made part and parcel of the Deed of Sale with Assumption of Mortgage.

Petitioners admit that they did not secure the consent of respondent Bank to the sale with assumption of mortgage. Coupled with the fact that the sale/assignment was not registered so that the title remained in the name of the Lozano spouses, insofar as respondent Bank was concerned, the Lozano spouses could rightfully and validly mortgage the property. Respondent Bank had every right to rely on the certificate of title. It was not bound to go behind the same to look for flaws in the mortgagor's title, the doctrine of innocent purchaser for value being applicable to an innocent mortgagee for value. (Roxas vs. Dinglasan, 28 SCRA 430; Mallorca vs. De Ocampo, 32 SCRA 48). Another argument for the respondent Bank is that a mortgage follows the property whoever the

possessor may be and subjects the fulfillment of the obligation for whose security it was constituted. Finally, it can also be said that petitioners voluntarily assumed the mortgage when they entered into the Deed of Sale with Assumption of Mortgage. They are, therefore, estopped from impugning its validity whether on the original loan or renewals thereof.

Petitioners next assail the validity and legality of the extrajudicial foreclosure on the following grounds:

- a) Petitioners were never notified of the foreclosure sale.
- b) The notice of auction sale was not posted for the period required by law.
- c) The publication of the notice of auction sale in the Luzon Weekly Courier was not in accordance with law.

The lack of notice of the foreclosure sale on petitioners is a flimsy ground. Respondent Bank not being a party to the Deed of Sale with Assumption of Mortgage, it can validly claim that it was not aware of the same and hence, it may not be obliged to notify petitioners. Secondly, petitioner Honesto Bonnevie was not entitled to any notice because as of May 14, 1968, he had transferred and assigned all his rights and interests over the property in favor of intervenor Raoul Bonnevie and respondent Bank was not likewise informed of the same. For the same reason, Raoul Bonnevie is not entitled to notice. Most importantly, Act No. 3135 does not require personal notice on the mortgagor. The requirement on notice is that:

"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."

In the case at bar, the notice of sale was published in the Luzon Courier on June 30, July 7 and July 14, 1968 and notices of the sale were posted for not less than twenty days in at least three (3) public places in the Municipality where the property is located. Petitioners were thus placed on constructive notice.

The case of *Santiago vs. Dionisio*, 92 Phil. 495, cited by petitioners is inapplicable because said case involved a judicial foreclosure and the sale to the vendee of the mortgaged property was duly registered making the mortgagee privy to the sale.

As regards the claim that the period of publication of the notice of auction sale was not in accordance with law, namely: once a week for at least three consecutive weeks, the Court of Appeals ruled that the publication of notice on June 30, July 7 and July 14, 1968 satisfies the publication requirement under Act No. 3135 notwithstanding the fact that June 30 to July 14 is only 14 days. We agree. Act No. 3135 merely requires that "such notice shall be published once a week for at least three consecutive weeks." Such phrase, as interpreted by this Court in *Basa vs. Mercado*, 61 Phil. 632, does not mean that notice should be published for three full weeks.

The argument that the publication of the notice in the "Luzon Weekly Courier" was not in accordance with law as said newspaper is not of general circulation must likewise be disregarded. The affidavit of publication, executed by the publisher, business/advertising manager of the Luzon Weekly Courier, states that it is "a newspaper of general circulation in x x x Rizal; and that the Notice of Sheriff's sale was published in said paper on June 30, July 7 and July 14, 1968." This constitutes prima facie evidence of compliance with the requisite publication. (*Sadang vs. GSIS*, 18 SCRA 491).

To be a newspaper of general circulation, it is enough that "it is published for the dissemination of local news and general information; that it has a bona fide subscription list of paying subscribers; that it is published at regular intervals." (*Basa vs. Mercado*, 61 Phil. 632). The newspaper need not have the largest circulation so long as it is

of general circulation. (*Banta vs. Pacheco*, 74 Phil. 67). The testimony of three witnesses that they do read the *Luzon Weekly Courier* is no proof that said newspaper is not a newspaper of general circulation in the province of Rizal.

Whether or not the notice of auction sale was posted for the period required by law is a question of fact. It can no longer be entertained by this Court. (see *Reyes, et al. vs. CA, et al.*, 107 SCRA 126). Nevertheless, the records show that copies of said notice were posted in three conspicuous places in the municipality of Pasig, Rizal namely: the Hall of Justice, the Pasig Municipal Market and Pasig Municipal Hall. In the same manner, copies of said notice were also posted in the place where the property was located, namely: the Municipal Building of San Juan, Rizal; the Municipal Market and on Benitez Street. The following statement of Atty. Santiago Pastor, head of the legal department of respondent bank, namely:

"Q - How many days were the notices posted in these two places, if you know?

A - We posted them only once in one day." (TSN, p. 45, July 25, 1973)

is not a sufficient countervailing evidence to prove that there was no compliance with the posting requirement in the absence of proof or even of allegation that the notices were removed before the expiration of the twenty-day period. A single act of posting (which may even extend beyond the period required by law) satisfies the requirement of law. The burden of proving that the posting requirement was not complied with is now shifted to the one who alleges non-compliance.

On the question of whether or not the petitioners had a right to redeem the property, We hold that the Court of Appeals did not err in ruling that they had no right to redeem. No consent having been secured from respondent Bank to the sale with assumption of mortgage by petitioners, the latter were not validly substituted as debtors. In fact, their rights were never recorded and hence, respondent Bank is charged with the obligation to recognize the right of redemption only of the Lozano spouses. But even granting that as purchaser or assignee of the property, as the case may be, the petitioners had acquired a right to redeem the property, petitioners failed to exercise said right within the period granted by law. The certificate of sale in favor of appellee was registered on September 2, 1968 and the one year redemption period expired on September 3, 1969. It was not until September 29, 1969 that petitioner Honesto Bonnevie first wrote respondent and offered to redeem the property. Moreover, on September 29, 1969, Honesto had at that time already transferred his rights to intervenor Raoul Bonnevie.

On the question of whether or not respondent Court of Appeals erred in holding that respondent Bank did not act in bad faith, petitioners rely on Exhibit "B" which is the letter of Jose Lozano to respondent Bank dated December 8, 1966 advising the latter that Honesto Bonnevie was authorized to make payments for the amount secured by the mortgage on the subject property, to receive acknowledgment of payments, obtain the Release of the Mortgage after full payment of the obligation and to take delivery of the title of said property. On the assumption that said letter was received by respondent Bank, a careful reading of the same shows that the plaintiff was merely authorized to do acts mentioned therein and does not mention that petitioner is the new owner of the property nor request that all correspondence and notice should be sent to him.

The claim of appellants that the collection of interests on the loan up to July 12, 1968 extends the maturity of said loan up to said date and accordingly on June 10, 1968 when defendant applied for the foreclosure of the mortgage, the loan was not yet due and demandable, is totally incorrect and misleading. The undeniable fact is that the loan matured on December 26, 1967. On June 10, 1968, when respondent Bank applied for foreclosure, the loan was already six months overdue. Petitioners' payment of interest on July 12, 1968 does not thereby make the earlier act of respondent Bank inequitable nor does it ipso facto result in the renewal of the loan. In order that renewal of a loan may be effected, not only the payment of the accrued interest is necessary but also the payment of interest

for the proposed period of renewal as well. Besides, whether or not a loan may be renewed does not solely depend on the debtor but more so on the discretion of the bank. Respondent Bank may not be, therefore, charged of bad faith.

WHEREFORE, the appeal being devoid of merit, the decision of the Court of Appeals is hereby **AFFIRMED**. Costs against petitioners.

SO ORDERED.

Aquino, J., concur.

Makasiar, (Chairman), Abad Santos, and Escolin, JJ., in the result.

Concepcion, Jr., J., no part.

De Castro, J., on leave.

[1] Third Division, Reyes, L.B., J., ponente; Busran and Nocon, JJ., concurring.

[2] "4. The MORTGAGOR shall not sell, dispose of, mortgage, nor in any manner encumber the mortgaged properties without the written con-sent of MORTGAGEE. If in spite of this stipula-tion, a mortgaged property is sold, the Vendee shall assume the mortgaged in the terms and con-ditions under which it is constituted, it being understood that the assumption of the Vendee (does) not release the Vendor of his obligation to the MORTGAGEE; on the contrary, both the Vendor and the Vendee shall be jointly and severally liable for said mortgage obligation. x x x"

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