DECISIONS / SIGNED RESOLUTIONS · SPECIAL NINETEENTH DIVISION[*] · JULY 19, 2007

SPOUSES ULDARICO AND LILIA TAUY AND REGINA TAUY, PLAINTIFFS-APPELLEES, VS. RURAL BANK OF KANANGA, LEYTE INC. (PRESENTLY OPERATING UNDER THE NAME FIRST INTERSTATE BANK), THRU ITS...

Ponente: LAGURA-YAP, J.

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LAGURA-YAP, J.:

This is an appeal on the Decision[1] dated July 19, 2007 of the Regional Trial Court, Branch 12 of Ormoc City, in Civil Case No. 4052-0, the dispositive of which reads:

> "WHEREFORE, judgment is rendered in favor of the plaintiffs and against defendant and hereby declares the nullity of the following:
>
> - The foreclosure proceedings filed before the Regional Trial Court in Tacloban City;
>
> - The auction sale conducted on July 31, 1997;
>
> - The sale of the property to the defendant bank
>
> - The Final Sale of the property in favor of the defendant bank;
>
> - The Transfer Certificate of Title in the name of the Rural Bank of Kananga, (Leyte) Inc. (TCT No. T-31532); and
>
> - The Tax Declaration of the same land (covered by TCT No. T-31532) in the name of the Rural Bank of Kananga, (Leyte) Inc.
>
> **SO ORDERED."**

This case involves a parcel of land, denominated as Lot 11458-A, located in Poblacion, Kananga, Leyte, with an area of 3,288 square meters, covered by TCT No. T-9844 and registered under the name Iluminada O. Tauy, married to Felix Tauy.

On July 25, 1994, Iluminada Tauy and her husband Felix Tauy executed a Special Power of Attorney[2] giving plaintiff Regina Tauy the power to obtain a loan from a banking institution and to use the subject lot as collateral. Regina Tauy is the grand-daughter of Felix and Iluminada Tauy.

Plaintiff-appellee Regina Tauy applied for a loan in the amount of twenty-one thousand two hundred forty pesos (P21,240.00) with defendant-appellant Rural Bank of Kananga (Leyte), Inc. She executed a Real Estate Mortgage[3] on the land as security for the loan, which was dated August 3, 1994. The loan was granted on August 6, 1994. It was payable within 180 days or was due on February 2, 1995.[4]

Meanwhile, Iluminada Tauy died on January 3, 1995 in Ormoc City.[5] Her heirs did not execute any document to settle her estate.

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On February 16, 1996, the original loan was restructured and/or extended and another Promissory Note[6] was executed by Regina Tauy. The loan amount stated in the Promissory Note is Twenty Thousand Eight Hundred Eighty-Six Pesos (P20,886.00), to be paid in 180 days or was due on August 14, 1996.

On March 17, 1997, the defendant-appellant bank sent a demand letter[7] addressed to Regina Tauy, informing her that the loan account has been overdue for seven months already. The letter stated that she still had "an outstanding principal amount of P20,886.00 excluding past due interest, penalties and other bank charges". On March 24, 1997, the defendant-appellant bank sent another letter[8] to Regina Tauy. The letter stated that the defendant-appellant back's internal auditors conducted a review of the loan and found that the true and correct amount of Regina Tauy's principal obligation at the time when the account was renewed or restructured on February 16, 1996, was Fifty Thousand Eight Hundred Sixteen Pesos and 49/100 (P50,816.49).

On April 8, 1997, Felix Tauy died.[9] Likewise, his heirs did not execute any document to settle his estate.

On May 6, 1997, defendant-appellant bank filed a petition[10] for Extrajudicial Foreclosure of Real Estate Mortgage Under Act No. 3135, as amended before Branches 6, 7, 8, 9 of the Regional Trial Court of Tacloban City. Thereafter, a Notice of Extrajudicial Sale[11] was issued, wherein it stated that the sale of the subject property would be conducted on July 31, 1997. The said notice was posted on the bulletin boards of the Municipal Building and the public market in Kananga, Leyte, and the Regional Trial Court in Tacloban City on May 28, 1997.[12]

During the auction sale held on July 31, 1997, the defendant bank, with a bid price of Three Hundred Thousand Pesos (P300,000.00)[13], was awarded the subject land. Hence, a Sheriff's Certificate of Sale was issued on September 22, 1997. TCT No. T-9844, registered under the name of Iluminada Tauy married to Felix Tauy, was cancelled and TCT No. T-31532[14] was issued to defendant-appellant Rural Bank of Kananga (Leyte), Inc. on February 12, 2001. The tax declaration under the name of Iluminada Tauy[15] was cancelled and transferred under the name of defendant-appellant bank on February 21, 2001[16].

Thereafter, the defendant-appellant bank sent a letter[17] dated February 27, 2001, to Regina Tauy, Lilia Tauy and family, informing the latter that the former has decided to offer to sell the subject land to the latter and giving the latter thirty (30) days within which to buy the subject land. The letter was received by Lilia Tauy on March 1, 2001.

On February 11, 2002, the defendant-appellant bank filed a Petition for the Issuance of a Writ of Possession[18] with the Regional Trial Court of Ormoc City.

Consequently, plaintiffs spouses Uldarico and Lilia Tauy and Regina Tauy filed a case for Cancellation of Foreclosure of Mortgage, Annulment of Auction Sale, Annulment of final Sale, Annulment of TCT, Reversion to Former TCT, with prayer for Temporary Restraining Order and Preliminary Injunction on February 18, 2002.

In their basic complaint, plaintiffs questioned the venue of the petition for the foreclosure proceedings as it was filed in Tacloban City; while the agreement between Regina and the bank in the promissory note is to file a case in the MTC of Kananga, Leyte or at the RTC of Ormoc City.

Plaintiffs claimed that when the loan was restructured in 1996 and another promissory note was signed; Iluminada Tauy was already deceased. The subject land is the paraphernal or exclusive property of Iluminada Tauy as she had inherited the subject land from her father. As Iluminada Tauy was already dead, Regina Tauy had no more power to encumber the subject land when she executed the second promissory note.

Further, plaintiffs argued that the extrajudicial foreclosure and sale should have been made under RA 720, as

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amended by RA 7353, and not under Act 3135, as amended, because defendant-appellant bank is a rural bank. Under RA 720, notices of foreclosure and execution of judgment should be posted in the most conspicuous area of the municipal building, municipal public market, the rural bank, the barangay hall and the barangay public market, if any, where the land is situated. The required posting of notices under Act 3135 was not even followed by the defendant-appellant bank, as it requires publication and posting of the notice in three public places of the municipality or city where the property is situated.

Defendant-appellant bank, on the other hand, asserted that rural banks are not precluded from availing of the procedures of Act 3135. Defendant-appellant bank maintained that the posting and publication requirements required by law were duly complied with. Defendant-appellant bank had no knowledge or information about the death of Iluminada Tauy. There was also no prior revocation of the special power of attorney that Iluminada Tauy and Felix Tauy executed in favor of Regina Tauy.

It is defendant-appellant bank's contention that in extrajudicial foreclosure of mortgage, personal notice to the mortgagor, much less to the unknown heirs, is not necessary for its validity. Moreover, the documents sought to be cancelled are all valid and binding. The proceedings conducted in relation thereto are likewise valid and binding. Plaintiffs are estopped from questioning the validity of the foreclosure and other proceedings as they had an undated letter[19] written by Lilia Tauy which admitted the legality and validity of the proceedings.

While the case was pending, plaintiffs filed a Motion for Leave of Court to File Amended Complaint[20] dated October 12, 2005 to include the other heirs of the late Iluminada Tauy as plaintiffs. Defendants did not file a comment to the motion; but instead, filed its Answer with Counterclaim[21] on February 9, 2006.

On July 19, 2007, the Regional Trial Court, Branch 12 of Ormoc City, rendered a Decision[22] in favor of the plaintiffs and against the defendants. The court a quo claimed that the bank failed to pursue the foreclosure proceedings against the proper party and failed to file a petition in the proper court. The court a quo said that the foreclosure proceedings was not filed under the proper law. The requirements of publication and posting of notices for extra-judicial foreclosure and sale of property were not also complied with.

Aggrieved, defendant filed a Notice of Appeal[23] on August 15, 2007. In an Order[24] dated August 21, 2007, the court a quo granted the notice of appeal and ordered the transmittal of the records of the case to this Court.

Meanwhile, plaintiffs filed a Motion for Partial Reconsideration[25] praying that they be awarded moral and exemplary damages, attorney's fees and litigation expenses.

On October 22, 2007, the court a quo issued an Order[26] denying plaintiffs' motion for lack of merit; however, the court a quo awarded nominal damages in the amount of Twenty Thousand Pesos (P20,000.00) to the plaintiffs. The court a quo then reiterated its order for the transmittal of the records of the case to this Court.

Defendant-appellant assigns the following as errors:

> I
>
> THE COURT COMMITTED ERROR WHEN IT DECLARED THAT THE EXTRA-JUDICIAL FORECLOSURE PROCEEDINGS SHOULD HAVE BEEN FILED AGAINST THE ESTATE OF THE LATE ILUMINADA TAUY.
>
> II
>
> THE COURT A QUO COMMITTED ERROR WHEN IT DECLARED THAT THE COURTS OF KANANGA AND ORMOC ALONE HAS THE EXCLUSIVE JURISDICTION TO PROCEED THE APPLICATION FOR THE EXTRA-JUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE AS

STATED IN THE PROMISSORY NOTE AND REAL ESTATE MORTGAGE.

III

THE COURT A QUO COMMITTED ERROR WHEN IT DECLARED THAT REP ACT 7353 IS THE EXCLUSIVE LAW APPLICABLE FOR THE FORECLOSURE OF THE QUESTIONED REAL ESTATE MORTGAGE.

IV

THE COURT A QUO COMMITTED ERROR WHEN IT AWARDED PLAINTIFFS NOMINAL DAMAGES IN THE AMOUNT OF P20,000.00 IN ITS AMENDED DECISION WITHOUT BASIS.[27]

This appeal should be denied.

On the first assigned error, defendant-appellant bank stated that the encumbrance over the subject land made during the lifetime of Iluminada Tauy continues to stand and affect the hereditary rights of her heirs, even after she died. It argued that Regina Tauy is the proper party as she was the one who signed the real estate mortgage. Furthermore, there was no revocation of Regina Tauy's authority, nor was there a notice of Iluminada Tauy's death.

On the other hand, plaintiffs-appellees pointed out that Iluminada Tauy died on January 3, 1995 and that the extrajudicial foreclosure proceedings were effected after her death, that is, the public auction sale was made on July 31, 1997. Such extrajudicial foreclosure can only be prosecuted during the lifetime of Iluminada Tauy for the reason that this kind of foreclosure under Act No. 3135, as amended, is authorized by the special power of attorney inserted in the mortgage deed; and that said special power of attorney cannot extend beyond the lifetime of the supposed mortgagor.

Section 7, Rule 86 of the Rules of Court provides as follows:

> "Sec. 7. Mortgage debt due from estate. — A creditor holding a claim against the deceased secured by mortgage or other collateral security, may abandon the security and prosecute claim in the manner provided in this rule, and share in the general distribution of the assets of the estate; or he may foreclose his mortgage or realize upon his security, by action in court, making the executor or administrator a party defendant, and if there is a judgment for a deficiency, after the sale of the mortgaged premises, or the property pledged, in the foreclosure or other proceeding to realize upon the security, he may claim his deficiency judgment in the manner provided in the preceding section; or he may rely upon his mortgage or other security alone, and foreclose the same at any time within the period of the statute of limitations, and in that event he shall not be admitted as a creditor, and shall receive no share in the distribution of the other assets of the estate; but nothing herein contained shall prohibit the executor or administrator from redeeming the property mortgaged or pledged, by paying the debt for which it is held as security, under the direction of the court, if the court shall adjudge it to be for the best interest of the estate that such redemption shall be made."

The foregoing provision of the Rules clearly recognizes three remedies that may be alternately availed of by the mortgagee in case the mortgagor dies, to wit:

> (1) to waive the mortgage and claim the entire debt from the estate of the mortgagor as an ordinary claim;
>
> (2) to foreclose the mortgage judicially and prove the deficiency as an ordinary claim; and;
>
> (3) to rely on the mortgage exclusively, or other security and foreclose the same at anytime, before it is barred by prescription, without the right to file a claim for any deficiency.

It follows that the mortgagee does not lose its right to extrajudicially foreclose the mortgage even after the death

of the mortgagor as a third alternative under Section 7, Rule 86 of the Rules of Court. The right of the mortgagee bank to extrajudicially foreclose the mortgage after the death of the mortgagor, acting through his attorney-in-fact, did not depend on the authority in the deed of mortgage executed by the latter. That right existed independently of said stipulation and is recognized in Section 7, Rule 86 of the Rules of Court. Hence, the defendant-appellant bank had the right to extrajudicially foreclose the mortgaged property.

The question now, is whether or not there was a valid and proper foreclosure proceedings and sale. To address this issue, the second and third errors will be discussed jointly.

The law governing cases of extrajudicial foreclosure of mortgage is Act No. 3135[28], as amended.[29] However, R.A. No. 7353 otherwise known as "An Act Providing for the Creation, Organization and Operation of Rural Banks, and for Other Purposes" which took effect on April 2, 1992, amended Act No. 3135 in so far as the extrajudicial foreclosure of rural banks are concerned. Hence, the law to be applied in this case is R.A. No. 7353, supplemented by Act No. 3135.

Defendant-appellant bank and plaintiffs-appellees argue on where the proper venue is for the foreclosure and sale of the real estate mortgage. Defendant bank contends that they could file the petition for extrajudicial foreclosure and sale of the real estate mortgage in Tacloban City. Plaintiffs-appellees counter that the proper venue is in Kananga or Ormoc City, as provided in the promissory note.

Parties can stipulate on an exclusive venue in which to file an action, as sanctioned by Section 4, Rule 4 of the Rules of Civil Procedure. However, the rule cannot be made to apply to the Petition for Extrajudicial Foreclosure filed by respondent bank because the provisions of Rule 4 pertain to venue of actions, which an extrajudicial foreclosure is not.[30]

An action is a formal demand of one's legal rights in a court of justice in the manner prescribed by the court or by the law.[31] Unlike an action, an extrajudicial foreclosure of real estate mortgage is initiated by filing a petition not with any court of justice but with the office of the sheriff of the province where the sale is to be made. By no stretch of the imagination can the office of the sheriff come under the category of a court of justice. Extrajudicial foreclosures are not judicial proceedings, actions or suits.[32]

In this case, as there is no venue stated in R.A. No 7353, Act No. 3135, as amended, applies, and not the general provisions of the Rules of Court on Venue of Actions.[33] Section 2 of Act 3135 provides:

> “Sec. 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 subject to 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.”

As such, the venue for filing a petition for foreclosure and sale of a real estate mortgage is within the province in which the property is situated. The stipulated venue of Kananga and Ormoc City in the promissory note is relevant only to actions arising from or related to the mortgage. Since the property is located in Kananga, Province of Leyte, and the foreclosure of real estate and the auction sale were conducted in Tacloban City, which is within the territorial jurisdiction of the Province of Leyte, then there is sufficient compliance with the venue requirement.

Defendant-appellant bank and plaintiffs-appellees asseverate on the sufficiency of the notice requirements of the extrajudicial foreclosure and sale of the real estate mortgage. Defendant-appellant bank argues that Act No. 3135 is applicable in this case; while plaintiffs-appellees claim that R.A. 7353 applies.

Section 3 of Act No. 3135 provides:

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> "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."

Section 6 of R.A. No. 7353 states:

> "Sec. 6. xxx
>
> The foreclosure of mortgage covering loans granted by rural banks and executions of judgment thereon involving real properties levied upon by a sheriff shall be exempt from the publications in newspaper now required by law where the total amount of loan, excluding interest due and unpaid, does not exceed One hundred thousand pesos (P100,000) or such amount as the Monetary Board may prescribe as may be warranted by prevailing economic conditions. It shall be sufficient publication in such cases if the notices of foreclosure and execution of judgment are posted in the most conspicuous area of the municipal building, the municipal public market, the rural bank, the barangay hall, the barangay public market, if any, where the land mortgaged is situated during the period of sixty (60) days immediately preceding the public auction or execution of judgment. Proof of publication as required herein shall be accomplished by an affidavit of the sheriff or officer conducting the foreclosure sale or execution of judgment and shall be attached with the records of the case: x x x "

Under Act No. 3135, there should be posting of notices in at least three public places of the municipality or city where the property is situated and if the property is worth more than four hundred pesos, a publication of the notice in a newspaper of general circulation in the municipality or city, once a week for at least three consecutive weeks, is needed. However, as the defendant-appellant is a rural bank, R.A. No 7353 should be applied. In lieu of the publication requirement for loans less than one hundred thousand pesos, the law requires the posting of notices in the most conspicuous area of the municipal building, the municipal public market, the rural bank, the barangay hall, and the barangay public market, if any.

In this case, the principal loan involved is less than one hundred thousand pesos and the property is worth more than four hundred pesos[34]. Under R.A. No 7353, there need not be a publication of the notice in a newspaper of general circulation. However, in the Sheriff's Certificate of Posting, the notices were only posted in three conspicuous public places: (1) Municipal Building of Kananga, Leyte; (2) Public Market of Kananga, Leyte and the RTC Tacloban City. There were no notices posted in the rural bank and the barangay hall, and the barangay public market, if there is one. There was no full compliance by defendant-appellant bank of the posting of notices requirement under R.A. No. 7353. Hence, there is no sufficient publication.

In Metropolitan Bank and Trust Company, Inc. vs. Peñafiel[35], the Supreme Court stressed the importance of the notice requirement:

> "The object of a notice of sale is to inform the public of the nature and condition of the property to be sold, and of the time, place and terms of the sale. Notices are given for the purpose of securing bidders and to prevent a sacrifice [sale] of the property. The goal of the notice requirement is to achieve a "reasonably wide publicity" of the auction sale. This is why publication in a newspaper of general circulation is required. The Court has previously taken judicial notice of the "far-reaching effects" of publishing the notice of sale in a newspaper of general circulation.

In Metropolitan Bank v. Wong[36], the High Court reminded mortgagees of their duty to comply faithfully with the statutory requirements of foreclosure, viz:.

> "While the law recognizes the right of a bank to foreclose a mortgage upon the mortgagor's failure to pay his obligation, it is imperative that such right be exercised according to its clear mandate. Each and every

> requirement of the law must be complied with, lest, the valid exercise of the right would end. It must be remembered that the exercise of a right ends when the right disappears, and it disappears when it is abused especially to the prejudice of others."

In sum, defendant-appellant bank failed to establish its compliance with the posting requirement under Section 6, R.A. No. 7353. Even if Section 3 of Act No. 3135 were to be applied in this case, the publication requirement was also not complied with. Consequently, the questioned extrajudicial foreclosure of real estate mortgage and sale were rightfully declared void.

On the fourth assigned error regarding the award of nominal damages, We agree with the defendant-appellant bank that the court a quo erred in its Order dated October 22, 2007, in awarding nominal damages to plaintiffs-appellees. The basis for the award was not stated in the order. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.[37] Anent the matter, the defendant-appellant bank was only exercising its remedy of foreclosure of the real estate mortgage due to failure to pay the principal obligation.

WHEREFORE, the instant appeal is DENIED. The Decision dated July 19, 2007, in Civil Case No. 4052-0, is AFFIRMED with MODIFICATION in that nominal damages awarded to plaintiffs-appellees, amounting to Twenty Thousand Pesos (P20,000.00) is DELETED.

SO ORDERED.

Ingles[*], and Lopez, JJ., concur.

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[*] Plaintiffs-appellees filed a Motion for Leave of Court to file Amended Complaint wherein all other heirs of Iluminada Tauy were joined as plaintiffs. There was no order issued by the court to admit the same; however, the defendant-appellant filed an Answer with Counterclaim.

[*] Vice Justice Delos Santos who is on wellness leave, per Office Order No. 13-14-GTI dated June 17, 2014.

[1] Record, pp. 338-341 (Penned by Judge Francisco C. Gedorio, Jr.).

[2] Record, p. 277.

[3] Record, p. 287.

[4] Record, p. 298 (Promissory Note).

[5] Record, p. 291.

[6] Record, p. 278.

[7] Record, p. 279.

[8] Record, p. 280.

[9] Record, p. 295.

[10] Record, pp. 267-268.

[11] Record, p. 269.

[12] Record, p. 270.

[13] Record, p. 271.

[14] Record, p. 274.

[15] Record, p. 288.

[16] Record, p. 289.

[17] Record, pp. 281-282.

[18] Record, pp. 283-286.

[19] Record, p. 39.

[20] Record, pp. 179-181.

[21] Record, pp. 219-222.

[22] Rollo, p. 31.

[23] Record, pp. 344-345.

[24] Record, p. 347.

[25] Record, pp. 349-351.

[26] Record, pp. 359-360 (penned by the Pairing Judge, Hon. Aplolinario M. Buaya).

[27] Rollo, pp. 35-36.

[28] An Act to Regulate the Sale of Property Under Special Powers Inserted In or Annexed to Real-Estate Mortgages approved on March 6, 1924.

[29] Goldenway Merchandising Corporation vs. Equitable PCI Bank, G.R. No. 195540, March 13, 2013.

[30] Spouses Ochoa vs. China Banking Corporation, G.R. No. 192877, March 23, 2011.

[31] Hagans vs. Wislizenus, G.R. No. 16680, September 13, 1920 (en banc).

[32] Supena vs. de la Rosa, A.M. No. RTJ-93-1031, January 28, 1997.

[33] Spouses Ochoa vs. China Banking Corporation, G.R. No. 192877, March 23, 2011.

[34] Rollo, p. 290 (Per Tax Declaration No 02-21001-00812 for the year 2003, the assessed value of Lot No.11458-A is P119,350).

[35] G.R. No. 173976, 27 February 2009.

[36] 412 Phil. 207 (2001).

[37] Article 2221, New Civil Code.

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