

**SPS. MOHAMMAD REZA BADIEE AND MAGNA B. BADIEE,
PLAINTIFFS-APPELLANTS, VS. BPI FAMILY SAVINGS BANK, INC.,
REPRESENTED BY ITS PRESIDENT, AND THE CLERK OF COURT AND
EX-OFFICIO SHER...**

Ponente: LAMPAS PERALTA, J.

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LAMPAS PERALTA, J.:

Before the Court is an appeal from the Decision dated July 24, 2013[1] in Civil Case No. 06-0044 of Branch 258, Regional Trial Court (RTC), Parañaque City which dismissed plaintiffs-appellants' complaint for "Annulment of Extrajudicial Foreclosure of Real Estate Mortgage Proceedings with Damages with T.R.O. and Preliminary Prohibitory Injunction."

THE ANTECEDENTS

The present appeal involves four (4) residential lots located at 5014 Castillo Street, Park View Homes, Sun Valley, Parañaque City,[2] which were considered as paraphernal properties of plaintiff-appellant Magna B. Badiee and previously registered in her name, with the following titles and areas:

Transfer Certificates of Title (TCT) No.

Area (in sq. m.)

130518

63.00[3]

130519

63.00[4]

130520

62.94[5]

130521

63.00[6]

The foregoing residential lots were utilized by plaintiffs-appellants as security[7] for their loan with the then Bank of South East Asia in the amount of P3,280,000.00.[8] The Bank of South East Asia was later renamed as DBS Bank Philippines, Inc. and merged with defendant-appellee BPI Family Savings Bank.[9]

When plaintiffs-appellants defaulted in the payment of the loan amortizations, defendant-appellee BPI Family Savings Bank filed with the Office of the Clerk of Court and Ex-Officio Sheriff of Parañaque City a petition for "Extra-judicial Foreclosure of Real Estate Mortgage of Spouses Magna B. Badiee and Mohammad Reza Badiee,"[10] docketed as FRE No. 04-230, praying for the foreclosure sale of the subject residential lots.

The public auction of the properties scheduled on January 14, 2005 was postponed because of publication error.[11] On January 18, January 25 and February 1, 2005, plaintiff-appellee caused the publication of the 2nd Notice of Sheriff's Sale,[12] informing that (i) the four (4) residential lots would be auctioned on February 16, 2005 to settle plaintiffs-appellants' loan obligations as of October 8, 2004 in the amount of P6,992,819.63,[13] and (ii) if the auction sale on February 16, 2005 did not materialize, the same would be held on February 23, 2005 without need of further notice.

The four (4) residential lots were sold during the public auction on February 23, 2005, with defendant-appellee BPI Family Savings Bank as the only bidder[14] which bid P2,409,600.00.[15] The Certificate of Sale was issued by the Clerk of Court and Ex-Officio Sheriff of Parañaque City on March 2, 2005.

The respective versions of the parties, as summarized by the trial court in its Decision dated July 24, 2013, are as follows:

"Plaintiffs Sps. Mohammad Riza Badiee and Magna B. Badiee executed a Real Estate Mortgage dated October 10, 1997 over properties covered by TCT Nos. 130518, 130519, 1305520 and 130521 with an area of 63 sq. m.; 63 sq. m.; 62.94 sq. m.; and 63 sq. m., respectively in consideration of a loan amount of Php. 3,280,000 in favor of then Bank of South East Asia (DBS Bank Philippines Inc. now BPI Family Savings Bank) as evidenced by Promissory notes dated May 08, 1998.

That sometime on October 2004, defendant bank moved for the Extra Judicial Foreclosure of the aforesaid Real Estate Mortgage through the office of the Clerk of Court, Parañaque City, because allegedly, plaintiffs failed to pay the loan despite demand. After which, a Notice of Extra Judicial Foreclosure was allegedly published on Metro Profile Magazine, a newspaper of general circulation dated on January 18, 25, and February 1, 2005 respectively. Subsequently, the Public Auction was held on February 23, 2005. The subject properties were sold to the sole bidder BPI Family Savings Bank. Thereafter the Certificate of Sale was issued in favor of DBS Bank Philippines, Inc. (now BPI Family Savings Bank, Inc.) dated March 2, 2005.

x x x x x x x x

Mohammad Reza Badiee testified that BPI Family Savings Bank foreclosed their properties located at No. 5014 Castillo St, Park View Homes, San (sic) Valley Parañaque City covered by TCT Nos. 31018, 31019, 31020 and 31021. That the defendant bank initiated the foreclosure proceedings sometimes in January 14 and February 16, 2004 (sic), however it did not materialize because there was error in publication. On February 23, 2004 (sic), the foreclosure proceeding materialized and only BPI Family Savings Bank participated therein and bid for a total amount of Php2,400,000 plus, although his total obligation with the defendant bank is Php. 3,280,000. He also testified that defendant bank demanded for him to pay the amount of almost Php 7 million pesos despite the fact that there was no accounting of his loan obligation and he already paid more than Php 2.2 million pesos as shown by the checks he issued (Exh. "A" to "RRRR"). This was received by the defendant bank but these were not credited to his loan obligation. Plaintiffs further testified that when he noticed a change of ownership of the bank, he went there to ask for new account number and for the statement of his loan balance so he could continue paying his amortization. Unfortunately the defendant bank merely told him "we will send you to legal".

He further testified the he also asked the help of Fr. Reuter to talk to the bank owner but it did not materialized. He received a letter from Asset Pool, Inc., informing that it took over the subject properties from the BPI Family Savings Bank. He prayed for moral damages and for attorneys fees for the injustices committed against him and their family as these incidents rendered them homeless and were compelled to litigate to protect their rights.

x x x x x x x x

The defendants presented LILY COREA (sic) ULTU, a Certified Public Accountant and an employee of BPI Family Savings Bank assigned at the head office. She was employed at the bank since 1989 up to present. Since 1992 she was the Account Servicing Officer. She testified that as an Account Servicing Officer she analyzed delinquent accounts one of which is the account of Mohamad Reza Badiie. That based on the record, Sps. Badiie executed a Real Estate Mortgage in favor of DBS, formerly the Bank of South East Asia and later merged to BPI Family Savings Bank. For failure of the plaintiffs to comply with the terms and conditions of the loan, defendant bank filed a petition for the extra judicial foreclosure of the Real Estate Mortgage since based on Statement of Application of Payment, the account was at default. That she verified the correctness of all the entries stated in the Statement of Account as evidenced by her signature (Exh. "15-F" and "15-K") which her staff named Mary Ann prepared. That all payments made by plaintiffs were reflected in their account except for check marked as Exh. "B" which was applied to penalties because it has an annotation of "return check"; check marked as Exhibit "UU" was not applied for payment of the loan because there was an annotation of "miscellaneous payment"; check marked as Exhibits "AAA" was not also applied to the loan because there was no annotation or validation that the same was for payment of monthly amortization. However, check marked as Exhibit "PPP" was reflected on the account.

She further testified that prior to the filing of the petition for extra judicial foreclosure of the Real Estate Mortgage, the bank made demand letters to the plaintiffs dated Sept. 24, 2004, October 28, 2004 and January 20, 2005. She testified also that based on record, plaintiff made telephone conversations with one of bank officers sometime in October 2004. That notice of Sheriff's Sale was issued and there was also posting and publication of the foreclosure sale as evidenced by affidavit of publication (Exh. "9")."[16]

On February 6, 2006, plaintiffs-appellants filed with the trial court a Complaint[17] against defendant-appellee BPI Family Savings Bank for "Annulment of Extrajudicial Foreclosure of Real Estate Mortgage Proceedings with Damages with T.R.O. and Preliminary Prohibitory Injunction," alleging that (i) the public auction was done without notice and publication as required under Act. No. 3135,[18] as amended;[19] (ii) defendant-appellee BPI Family Savings Bank was the only bidder in the public auction, in violation of Section 5,[20] PROCEDURE IN EXTRA-JUDICIAL FORECLOSURE OF MORTGAGE;[21] and, (iii) defendant-appellee BPI Family Savings Bank failed to credit the amount paid by plaintiffs-appellants amounting to P2,200,000.00. Plaintiffs-appellants prayed for (i) nullification of the auction sale and certificate of sale; (ii) issuance of a temporary restraining order and eventually a permanent prohibitory injunction enjoining the consolidation of title in favor of defendant-appellee BPI Family Savings Bank; and, (iii) award of attorney's fees.

In an Order dated February 23, 2006,[22] the trial court denied for lack of merit plaintiffs-appellants' prayer for issuance of a temporary restraining order and a writ of preliminary injunction.

On March 21, 2006, defendant-appellee BPI Family Savings Bank filed its Answer with Counterclaim,[23] alleging that the complaint should be dismissed for lack of cause of action because (i) plaintiffs-appellants were estopped from instituting the complaint since they defaulted in the payment of their obligation despite repeated demands; (ii) as the unpaid creditor/mortgagee, defendant-appellee BPI Family Savings Bank had unquestionable right to foreclose the mortgage and consolidate in its own name the title over the subject properties after plaintiffs-appellants failed to pay the monthly installments due; (iii) the accounting and/or computation of plaintiffs-appellants' account was correct and in accordance with applicable law and the mortgage contract; and, (iv) plaintiffs-appellants failed to comply with the verification requirement under Section 4, Rule 7, Rules of Civil Procedure. As counterclaim, defendant-appellee BPI Family Savings Bank prayed for award of exemplary damages, attorney's fees and expenses of litigation.

On March 24, 2006, plaintiffs-appellants filed their Answer to Defendant Bank's Counter-claim,[24] praying that defendant-appellee BPI Family Savings Bank's counterclaim be dismissed because the expenses it incurred were of its own misdoing.

During pre-trial,[25] the parties' respective offers for factual stipulation were not admitted by the other.[26] In the same proceeding, defendant-appellee BPI Family Savings Bank raised the following issues:

" x x x x x x x x

1. Whether or not the extra-judicial foreclosure over the subject properties is valid; and
2. Whether or not herein defendant bank is entitled attorney's and cost of suit."[27]

Trial ensued. The lone witness for plaintiffs-appellants was plaintiff-appellant Mohammad Reza Badiee,[28] while the lone witness for defendant-appellee BPI Family Savings Bank was its Account Servicing Officer Lily Correa Ultu.[29] On rebuttal, plaintiffs-appellants again presented plaintiff-appellant Mohammad Reza Badiee.[30]

On July 24, 2013, the trial court rendered a Decision dismissing (i) plaintiffs-appellants' complaint for failure to preponderantly prove their cause of action, and (ii) defendant-appellee BPI Family Savings Bank's counterclaim for failure to prove that the complaint was frivolously and maliciously filed. Thus:

"WHEREFORE, premises considered, for failure of the plaintiff to preponderantly prove that they have a cause of action against the defendant, this case is DISMISSED as well as the defendant's counterclaim.

SO ORDERED."[31]

Hence, the present appeal[32] of plaintiffs-appellants, premised on this sole assigned error:

WHETHER OR NOT THE COURT A QUO COMMITTED SERIOUS AND REVERSIBLE ERROR IN DISMISSING THE INSTANT CASE DESPITE OVERWHELMING EVIDENCE TO SUPPORT THE CAUSE OF ACTION OF PLAINTIFFS-APPELLANTS.[33]

THE ISSUE

Whether the trial court erred in dismissing plaintiffs-appellants' complaint for "Annulment of Extrajudicial Foreclosure of Real Estate Mortgage Proceedings with Damages with T.R.O. and Preliminary Prohibitory Injunction."

THE COURT'S RULING

In upholding the validity of the extrajudicial foreclosure proceedings and dismissing plaintiffs-appellants' complaint for annulment thereof, the trial court noted that (i) as plaintiffs-appellants failed to pay their loan obligations, the foreclosure of the real estate mortgage and auction of subject residential lots was simply an exercise of defendant-appellee BPI Family Savings Bank's right as unpaid creditor-mortgagee; (ii) the notice of public auction was published in a newspaper of general circulation; and, (iii) a public auction is valid even if there was only one (1) bidder. Said the trial court:

"It is apparent that plaintiffs failed to pay their mortgage obligations from the defendant bank. Record shows that the plaintiffs borrowed the amount of P3,280,000.00 payable for fourteen (14) years from June 8, 1998 to May 8, 2012. However, out of this amount obtained, plaintiff still have an outstanding obligation of P3,125,956.51 as of October 8, 2004 as shown in the Statement of their Account (Exhs. 15; 15-A, 15-B, 15-C, 15-D, 15-E).

To the mind of this Court, the foreclosure of the subject mortgage properties was simply an exercise of defendant bank's right as unpaid creditor/mortgagee.

As regards the issue that the foreclosure proceeding on subject mortgage properties was void for being conducted without notice and publication of the bidding in a newspaper of general circulation, the same cannot

be considered since records show that the notices of auction sale were published in a newspaper of general circulation as shown in publisher's affidavit (Exh. "9"), in January 18 to 24, 2005 issue of Metro Profile (Exh. "10-10-A"), in January 25-31, 2005 issue of Metro Profile (Exh. "11-11-A") and in February 1-7, 2005 issue of Metro Profile (Exh. 12-12-A).

As regards the contention that there was only one bidder during the auction sale, the reliance of the plaintiffs in this aspect is misplaced because the present rule under par. 5, Administrative Matter No. 99-10-05-0 as further amended on August 7, 2001, entitled Procedure in Extrajudicial Foreclosure of Mortgage, specially provides that the auction sale is valid even if there is only one bidder who is free to make his/her own bid.

Based on the foregoing, foreclosure proceeding conducted on the subject properties of the plaintiff is considered valid."^[34]

Plaintiffs-appellants fault the trial court in so ruling. Allegedly, "there is complete absence of any legal basis to auction the properties in question as there is no default in payment of the loan"^[35] because (i) "as of May 22, 2006, plaintiffs-appellants' outstanding balance of the loan of the subject mortgage is only P716,356.51;"^[36] and (ii) "as of the date of the foreclosure (October 2004) he [plaintiff-appellant Mohammad Reza Badiee] has already paid 2.2 Million Pesos to the Bank."^[37]

It must be noted at the outset that plaintiffs-appellants are no longer assailing the trial court's ruling that the public auction held on February 23, 2005 was valid. Thus, plaintiffs-appellants must be deemed to have accepted said ruling on the validity of the public auction. Under Section 8,^[38] Rule 51, the appellate court has no power to resolve unassigned errors. As held in *Cojuangco, Jr. vs. Court of Appeals*,^[39] wherein not the entire Decision of the trial court was appealed to the Court of Appeals:

"Petitioner is correct in asserting that the entire RTC judgment was not appealed to Respondent Court of Appeals. The errors assigned in the appellants' Brief, as quoted earlier, attacked only the trial court's (1) conclusion that "defendants-appellants acted in bad faith" and (2) award of damages in favor of herein petitioner. In short, only those parts relating to the second cause of action could be reviewed by the CA.

Respondent Court could not therefore reverse and set aside the RTC Decision in its entirety and dismiss the original Complaint without trampling upon the rights that had accrued to the petitioner from the unappealed portion of the Decision. It is well-settled that only the errors assigned and properly argued in the brief, and those necessarily related thereto, may be considered by the appellate court in resolving an appeal in a civil case. The appellate court has no power to resolve unassigned errors, except those that affect the court's jurisdiction over the subject matter and those that are plain or clerical errors."

In fine, the Court shall limit its review to the question of whether defendant-appellee Family Savings Bank was correct in exercising the right of an unpaid creditor when it foreclosed the subject four (4) residential lots.

Basic are the grounds for the proper annulment of the foreclosure sale which are: (1) there was fraud, collusion, accident, mutual mistake, breach of trust or misconduct by the purchaser; (2) the sale had not been fairly and regularly conducted; or, (3) the price was inadequate and the inadequacy was so great as to shock the conscience of the court.^[40]

In its petition for extrajudicial foreclosure,^[41] defendant-appellee BPI Family Savings Bank was claiming the balance under the promissory note amounting to P3,125,956.51, plus interest, penalties, attorney's fees and foreclosure sale, or the total amount of P6,992,819.63, the breakdown of which is as follows:

<td </td

"Promissory Note dated May 8, 1998

P 3,125,956.51

Interest

1,423,022.91

Penalties

911,676.29

Attorney's Fees (25%)

1,398,563.92

Estimated Foreclosure Expenses

133,600.00

P 6,992,819.63"[42]

[=====]

In support of their contention that they were not in default in their payment of the loan obligations, plaintiffs-appellants presented the following documents before the trial court: (i) statement attached to a letter dated May 22, 2006 showing that the outstanding balance was only P716,356.51;[43] (ii) proof of payments such as payment/deposit slips, cleared checks and official receipts which allegedly were not applied to plaintiffs-appellants' loan obligations;[44] and, (iii) Decision dated August 29, 2008[45] in Civil Case No. 05-453[46] of Branch 149, RTC, Makati City.

A foreclosure sale may be annulled if the right of a mortgagee to foreclose the property subject of a real estate mortgage did not arise, such as when the mortgagor was not in default in the payment of his loan obligations. A creditor may foreclose on a real estate mortgage only if the debtor fails to pay the principal obligation when it falls due.[47] In the present case, there is need to look into the documents presented by both parties considering that (i) plaintiffs-appellants were claiming that they were not in default in the payment of their loan obligations, and (ii) the fact that the amount demanded by the mortgagee is excessive, by itself, would not invalidate a foreclosure sale.

Under existing jurisprudence, a foreclosure sale is valid even if the amount demanded by the mortgagor is excessive, as long as none of the grounds for the proper annulment thereof is present and the mortgagor was in default in the payment of his loan obligation. In *United Coconut Planters Bank vs. Beluso*,[48] the Supreme Court, despite therein petitioner's incorrect computation of therein respondents' indebtedness, affirmed the validity of the foreclosure proceedings. Said the Supreme Court:

"UCPB alleges that none of the grounds for the annulment of a foreclosure sale are present in the case at bar. x x x

The spouses Beluso retort that since they had the right to refuse payment of an excessive demand on their account, they cannot be said to be in default for refusing to pay the same. Consequently, according to the spouses Beluso, the "enforcement of such illegal and overcharged demand through foreclosure of mortgage" should be voided.

We agree with UCPB and affirm the validity of the foreclosure proceedings. Since we already found that a valid demand was made by UCPB upon the spouses Beluso, despite being excessive, the spouses Beluso are

considered in default with respect to the proper amount of their obligation to UCPB and, thus, the property they mortgaged to secure such amounts may be foreclosed. Consequently, proceeds of the foreclosure sale should be applied to the extent of the amounts to which UCPB is rightfully entitled.

As argued by UCPB, none of the grounds for the annulment of a foreclosure sale are present in this case. The grounds for the proper annulment of the foreclosure sale are the following: (1) that there was fraud, collusion, accident, mutual mistake, breach of trust or misconduct by the purchaser; (2) that the sale had not been fairly and regularly conducted; or (3) that the price was inadequate and the inadequacy was so great as to shock the conscience of the court."

Record bears that plaintiffs-appellants were indeed in default in the payment of their loan obligations when defendant-appellee filed the petition for extrajudicial foreclosure of real estate mortgage.

Firstly, under the loan agreement,[49] the P3,280,000.00 loan was granted to plaintiffs-appellants on the following conditions: (i) interest of 21% per annum on the first year, with the interest rate for the succeeding years to be set by the bank,[50] and (ii) the loan amortization is due every 8th of the month and for the first year, the monthly installment was at P60,691.11. A careful review of the parties' documentary evidence[51] showed that plaintiffs-appellants failed to strictly comply with the aforementioned second condition, as (i) there were payments after the 8th of every month; (ii) there were months with no payment at all; and, (iii) plaintiffs-appellants' payments were usually lower than the required monthly installment. Thus, plaintiffs-appellants' payments were first applied not only to interest but also to penalties, and only P154,043.49 was applied to the principal.[52]

Secondly, the loan balance of P716,356.51 as of May 22, 2006 was arrived at by defendant-appellee BPI Family Savings Bank by deducting from the principal balance of P3,125,956.51 as of October 8, 2004, its bid price of P2,409,600.00[53] during the auction sale. Thus, excluding interests, penalties and attorney's fees, the remaining principal obligation amounted to P3,125,956.51.

Thirdly, considering that plaintiffs-appellants were in delay in the payment of their loan obligation, defendant-appellee had the option to demand the full payment thereof. Under the loan agreement,[54] the same would become immediately due and payable if plaintiffs-appellants failed to promptly and fully paid the loan obligations when due. Notably, even assuming that Bank of South East Asia/DBS Bank Philippines, Inc./defendant-appellee BPI Family Savings Bank failed to post plaintiffs-appellants' payments totalling P2.2 Million and waived the payment of interests, penalties and attorney's fees, the alleged unposted P2.2 Million was not enough to pay plaintiffs-appellant's loan in the amount of P3,280,000.00.

By comparing plaintiffs-appellants' proof of payments against the statement of account provided by defendant-appellee BPI Family Savings Bank, the Court finds that plaintiffs-appellants' payment amounting to P1,779,357.96[55] were applied to the latter's loan account as these payments were reflected in the statement of account as of January 31, 2002.[56] In addition, defendant-appellee BPI Family Savings Bank acknowledged[57] before the trial court that plaintiffs-appellants made other payments totalling P210,724.46[58] which were posted in succeeding statements of account. This only shows that contrary to the claim of plaintiffs-appellants, all their payments were posted in their loan account with defendant-appellee BPI Family Savings Bank.

Fourthly, the complaint for sum of money/judgment on the deficiency filed with Branch 149, RTC, Makati City by defendant-appellee BPI Family Savings Bank against plaintiffs-appellants was dismissed in a Decision dated August 29, 2008[59] of said trial court primarily because the complaint was prematurely filed. The issue of alleged non-posting of plaintiffs-appellants' payments was not squarely resolved. As stated in the Decision dated August 29, 2008 of said trial court:

"Resolving this deficiency claim case, it is noted that there is a pending case for annulment of extrajudicial foreclosure of real estate mortgage filed by the defendants in the Regional Trial Court of Paranaque City with docket No. 06-0044 (Exhibit "130). Thus, this case is hereby treated as prematurely filed for the simple reason that if the foreclosure sale be declared a nullity, then, there is nothing to talk of deficiency claim." [60]

Then again, squarely applicable in the present case is the general rule that findings of facts of trial courts are entitled to great weight on appeal and should not be disturbed except for strong and valid reasons. [61] No such strong and valid reasons exist in this case.

WHEREFORE, the trial court's Decision dated July 24, 2013 is AFFIRMED.

SO ORDERED.

Acosta, and Garcia-Fernandez, JJ., concur.

[1] pp. 233-241, Rollo; pp. 720-728 and 729-737, Record

[2] TSN dated October 24, 2007, p. 117, Rollo; pp. 754, 792 and 824, Record

[3] pp. 58-60, Rollo; pp. 21-23 and 68-70, Record; TSN dated October 24, 2007, pp. 118-119, Rollo; pp. 755-756, 793-794 and 825-826, Record

[4] pp. 61-63, Rollo; pp. 24-26 and 71-73, Record; TSN dated October 24, 2007, pp. 118-119, Rollo; pp. 755-756, 793-794 and 825-826, Record

[5] pp. 64-66, Rollo; pp. 27-29 and 74-76, Record; TSN dated October 24, 2007, pp. 118-119, Rollo; pp. 755-756, 793-794 and 825-826, Record

[6] pp. 67-68, Rollo; pp. 30-32 and 77-79, Record; TSN dated October 24, 2007, pp. 118-119, Rollo; pp. 755-756, 793-794 and 825-826, Record

[7] Real Estate Mortgage dated October 10, 1997, Exhs. "TTTT" and "1", pp. 46-49 and 54-57, Rollo; pp. 9-12, 17-20, 56-59 and 64-67, Record

[8] Credit Agreement dated October 13, 1997, Exhs. "ZZZZ" and "14", pp. 327-330, Record; Promissory Note dated May 8, 1998, Exh. "2", pp. 69-70, and 197 and 200, Rollo; pp. 33-34, 80-81, 537 and 540, and 559 and 562, Record; Disclosure Statement dated May 8, 1998, Exh. "3", pp. 71-72 and 198-199, Rollo; pp. 35-36, 82-83, 538-539 and 560-561, Record

[9] TSN dated March 26, 2008, pp. 866 and 906, Record

[10] Exhs. "UUUU" and "8", pp. 50-53, Rollo; pp. 13-16 and 60-63, Record

[11] TSN dated October 24, 2007, p. 121, Rollo; pp. 758, 796 and 828, Record; TSN dated July 31, 2009, pp. 171-173, Rollo; pp. 939-941, 985-987 and 1023-1025, Record

[12] Affidavit of Publication, Exh. "9", pp. 201-202, Rollo; pp. 541-542 and 563-564, Record; Metro Profile, January 18-24, 2005, Exh. "10", pp. 203-204, Rollo; pp. 543-544 and 565-566, Record; Metro Profile, January 25-31, 2005, Exh. "11", pp. 205-206, Rollo; pp. 545-546 and 577-578, Record; Metro Profile, February 1-7, 2005, Exh. "12", pp. 207-208, Rollo; pp. 547-548 and 579-580, Record

[13] pp. 51-52, Rollo; pp. 14-15 and 61-62, Record

"Promissory Note dated May 8, 1998

P 3,125,956.51

Interest

1,423,022.91

Penalties

911,676.29

Attorney's Fees (25%)

1,398,563.92

Estimated Foreclosure Expenses

133,600.00

Total payable to BPI FAMILY SAVINGS BANK, INC.

P 6,992,819.63"

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[14] TSN dated October 24, 2007, pp. 121-122, Rollo; pp. 758-759, 796-797 and 828-829, Record

[15] Certificate of Sale, Exhs. "WWWW" and "13", pp. 44-45 and 91-92, Record

[16] pp. 234-239, Rollo; pp. 721-726 and 730-735, Record

[17] pp. 39-44, Rollo; pp. 2-7 and 49-54, Record

[18] An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgages; March 6, 1924

[19] 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;" December 7, 1933

[20] "5. No auction sale shall be held unless there are at least two (2) participating bidders, otherwise the sale shall be postponed to another date. If on the new date set for the sale there shall not be at least two, bidders, the sale shall then proceed. The names of the bidders shall be reported by the sheriff or the notary public who conducted the sale to the Clerk of Court before the issuance of the certificate of sale."

[21] Supreme Court (SC) Administrative Matter (AM) No. 99-10-05-0; December 28, 1999

[22] p. 93, Rollo; pp. 113, 114, 115, 116 and 117, Record; The Order was amended on March 20, 2006 to reflect that it was defendant-appellee BPI Family Savings Bank's counsel who suggested that plaintiffs-appellants may instead file a notice of lis pendens with the Register of Deeds, p. 94, Rollo; pp. 103, 131 and 132, Record

[23] pp. 78-82, Rollo; pp. 133-137, Record

[24] pp. 83-85, Rollo; pp. 138-140 and 141-143, Record

- [25] Pre-Trial Order dated June 18, 2007, pp. 345-346, 347-348, 349-350 and 351-352, Record
- [26] pp. 345, 347, 349 and 351, Id.
- [27] pp. 345-346, 347-348, 349-350 and 351-352, Id.
- [28] TSN dated October 24, 2007, pp. 108-140, Rollo; pp. 746-777, 784-815 and 816-847, Record
- [29] TSN dated March 26, 2008, pp. 848-883 and 888-922, Record; TSN dated July 31, 2009, pp. 155-192, Rollo; pp. 923-960, 969-1006 and 1007-1044, Record
- [30] TSN dated November 18, 2011, pp. 1046-1063 and 1067-1084 and 1085-1102, Record
- [31] p. 241, Rollo; pp. 728 and 737, Record
- [32] pp. 243-245, Rollo; pp. 739-741 and 742-744, Record
- [33] p. 8, Rollo
- [34] pp. 240-241, Rollo; pp. 727-728 and 736-737, Record
- [35] p. 36, Rollo
- [36] p. 35, Id.
- [37] Id.
- [38] SEC. 8. Questions that may be decided. — No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court pass upon plain errors and clerical errors.
- [39] 309 SCRA 602, July 2, 1999
- [40] United Coconut Bank vs. Beluso, 530 SCRA 567, August 17, 2007, cited in Philippine National Bank vs. Roque, 665 SCRA 57, February 6, 2012
- [41] Exhs. "UUUU" and "8", pp. 50-53, Rollo; pp. 13-16 and 60-63, Record
- [42] pp. 51-52, Rollo; pp. 14-15 and 61-62, Record
- [43] Exh. "AAAAA-2", p. 223, Rollo; pp. 672 and 692, Record
- [44] Exhs. "A" to "AAAA", "CCCC" to "RRRR" and "XXXX" to "YYYY", pp. 230-326, Record
- [45] Exh. "BBBBB", pp. 226-230, Rollo; pp. 683-687 and 696-699, Record
- [46] Complaint for sum of money filed by defendant-appellee BPI Family Savings Bank against plaintiffs-appellants for deficiency claim; defendant-appellee BPI Family Savings Bank was later substituted by Asset Pool A (SPV-AMC), Inc., pp. pp. 226-227, Rollo; pp. 683-684 and 696-697, Record
- [47] Philippine National Bank vs. Cabatingan, 557 SCRA 426, July 9, 2008
- [48] 530 SCRA 567, August 17, 2007
- [49] Promissory Note dated May 8, 1998, Exh. "2", pp. 69-70, and 197 and 200, Rollo; pp. 33-34, 80-81, 537 and 540, and 559 and 562, Record; Disclosure Statement dated May 8, 1998, Exh. "3", pp. 71-72 and 198-199, Rollo; pp. 35-36, 82-83, 538-539 and 560-561, Record

[50] Thus, (i) from May 8, 1998 to May 8, 1999, the interest rate was 21% per annum; (ii) 17.50% per annum from May 9, 1999 to May 8, 2000; (iii) 12.50% per annum from May 9, 2000 to May 8, 2001; and, (iv) 14.00% per annum from May 9, 2001 to January 31, 2002, Exhs. "15" to "15-E", pp. 209-214, Rollo; pp. 549-554 and 581-586, Record

[51] Exhs. "A" to "AAAA", "CCCC" to "RRRR" and "XXXX" to "YYYY", pp. 230-326, Record; Exhs. "15" to "15-E", pp. 209-214, Rollo; pp. 549-554 and 581-586, Record

[52] Exhs. "15" to "15-E", pp. 209-214, Rollo; pp. 549-554 and 581-586, Record

[53] Certificate of Sale, Exhs. "WWWW" and "13", pp. 44-45 and 91-92, Record

[54] Promissory Note dated May 8, 1998, Exh. "2", pp. 69-70, and 197 and 200, Rollo; pp. 33-34, 80-81, 537 and 540, and 559 and 562, Record; Disclosure Statement dated May 8, 1998, Exh. "3", pp. 71-72 and 198-199, Rollo; pp. 35-36, 82-83, 538-539 and 560-561, Record

[55] Exhs. "A" to "J", "L" to "U", "X" to "TT", "GGG", "NNN" and "RRR", pp. 230-239, 241-250, 253-275, 288, 295 and 299, Record

[56] Exhs. "15" to "15-E", pp. 209-214, Rollo; pp. 549-554 and 581-586, Record

[57] Comment to Manifestation, pp. pp. 453, 461-463, 466 and 474-476, Record

[58] Exhs. "K", "XXX", "IIII" to "OOOO" and "QQQQ", pp. 240, 305, 315-321 and 322, Id.

[59] Exh. "BBBBB", pp. 226-230, Rollo; pp. 683-687 and 696-699, Record

[60] p. 229, Rollo; pp. 686 and 698, Record

[61] Local Superior of the Servants of Charity (Guanellians), Inc. vs. Jody King Construction & Development Corporation, 472 SCRA 445, October 12, 2005

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