

**SPS. EFREN & ZOSIMA RIGOR, PLAINTIFFS-APPELLANTS, VS.
WESTMONT BANK & ATTY. MAXIMO B. SILAO,
DEFENDANTS-APPELLEES.**

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the August 16, 2000 Decision[1] of the Regional Trial Court, Branch 63, Tarlac City, in Civil Case No. 8657 for Annulment and/or Declaration of Nullity of Real Estate Mortgage Contract, Extrajudicial Foreclosure Proceedings, Damages and Preliminary Injunction With Prayer for a Restraining Order filed by Spouses Efren and Zosima Rigor (plaintiffs-appellants) against Westmont Bank and Atty. Maximo B. Silao (defendants-appellees). The dispositive portion of said decision reads:

“WHEREFORE, judgment is hereby rendered –

- declaring valid the Real Estate Mortgage dated April 19, 1996;
- declaring null and void the waiver of the right of redemption therein stated and plaintiffs may redeem the subject property within one year from the registration of the certificate of sale, and if the said certificate of sale was already registered and the one year period from registration had lapsed, then the redemption shall be within one year from the finality of this judgment;
- dismissing the counterclaim.

No costs.

SO ORDERED.”

The Complaint [2] of the plaintiffs-appellants alleges:

“4. THAT on April 19, 1996, a loan/credit accommodation of P2, 300,000.00 was granted by defendant bank to herein plaintiffs and, in order to secure payment thereof, plaintiffs were made to execute in favor of defendant bank a mortgage over two (2) parcels of land including the buildings and improvements existing thereon situated in Bo. Binauganan, Tarlac, Tarlac, a Xerox copy of the mortgage contract entered into is hereto attached and made an integral part hereof as Annex ‘A’;

5. THAT under paragraph 5 of said mortgage contract, Annex ‘A’ hereof, it is distinctly provided that:X x x.

In case of the sale pursuant to the provisions of this paragraph, such sale, whether made to the MORTGAGEE or to any other person or persons, shall be made free from any right of redemption on the part of the MORTGAGOR, the right of redemption granted by Section 6 of said Act No. 3135 as amended by Act 4118 and Sec. 78, Rep. Act No. 337, being expressly waived by the MORTGAGOR, and the said President of the MORTGAGEE at the time, or his substitute or substitutes, is/are hereby expressly authorized and empowered at such sale to execute and deliver, on behalf of the MORTGAGOR or in his/its name and stead, such deeds of conveyances as may be necessary or proper for the purpose of vesting in the purchaser at such sale full, complete and absolute title to the property so sold, free from all liens and encumbrances whatsoever.

X x x x

6. THAT upon the application of defendant bank, defendant notary public is causing the sale of the properties described under Annex 'A' on April 17, 1998 in extrajudicial foreclosure, a Xerox copy of the 'Notice of Extrajudicial Sale' is hereto attached and made an integral part hereof as Annex 'B.'

7. THAT the extrajudicial foreclosure of plaintiffs' properties aforementioned is anchored upon a void and illegal contract of mortgage (Annex 'A');

8. THAT the nullity and illegality of said mortgage contract (Annex 'A') proceeds from the fact that it stipulates that ownership of the properties would automatically pass to the vendee, such being a pactum commissorium;

9. THAT foreclosure is being resorted to by defendant bank purposely to circumvent the prohibition against said pactum commissorium, it having taken away plaintiffs' right of redemption granted them under the law by conveniently providing and stipulating in said contract that '(I)n case of the sale pursuant to the provisions of this paragraph, such sale, whether made to the Mortgagee or to any other person or persons, shall be made free from any right of redemption on the part of the Mortgagor, the right of redemption granted by Section 6 of said Act No. 3135 as amended by Act 4118 and Sec. 78, Rep. Act No. 337, being expressly waived by the Mortgagor';

10. THAT while it may be argued that rights may be waived, such waiver must not be contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognized by law (Article 6 Civil Code), such that the stipulation on plaintiffs' waiver, effectively removing and denying them of their right of redemption guaranteed by law (Act 3135), is contrary to public policy;

11. THAT it must be noted that public policy favors redemption (Lee Chuy Realty Corporation vs. Court of Appeals, 250 SCRA 596) and that the POLICY of the law is to aid rather than defeat the right of redemption (Bodiogan vs. Court of Appeals, 248 SCRA 496; and Tibajia vs. Court of Appeals, 193 SCRA 581);

12. THAT in virtue of the nullity and illegality of the mortgage contract (Annex 'A'), the extrajudicial foreclosure of plaintiffs' properties sought by defendant bank finds no legs to stand on and so must necessarily fail;

13. THAT plaintiffs are entitled to the relief demanded in this complaint and the whole or part of which consists in restraining defendants from proceeding with the extrajudicial foreclosure sale of plaintiffs' properties scheduled on April 17, 1998 at 2:00 P.M. as per Annex 'B' hereof;

14. THAT the continuance of the aforesaid extrajudicial foreclosure proceedings by defendants would work grave injustice to the plaintiffs, and that great and irreparable damage and injury would result to them before the matter can be heard unless a temporary restraining order is issued;

15. THAT defendants are in the process of carrying out the illegal foreclosure sale in violation of plaintiffs' rights and tends to render the judgment in this case ineffectual;

xxx."

On the other hand, defendants-appellees contend that the provisions of the Real Estate Mortgage (REM) are valid and binding and do not violate any provision of the Civil Code and other laws. Their stand as can be gleaned from their Answer[3] is as follows:

"7. Paragraph 5 of the Real Estate Mortgage is not pactum commissorium since it does not provide for an automatic appropriation by defendant Westmont of the properties mortgaged in case of default on the loan by the plaintiffs. The properties will have to be foreclosed in accordance with law, as what defendant Atty.

Maximo Silao is in the process of doing (Uy Tong vs. Court of Appeals, 161 SCRA 383; Northern Motors, Inc. vs. Herrera, 49 SCRA 392). The essence of pactum commissorium is that ownership will pass to the mortgagee by mere default of the mortgagor. In the questioned provision, defendant Westmont does not become the owner of the mortgaged properties by mere non-payment or default of the mortgagor. Section 5 of the mortgage deed merely authorizes the President of the Mortgagee or his substitute to execute and deliver the deeds of conveyance to the winning bidder in the foreclosure sale, which may be another person or entity and not necessarily defendant Westmont.

8. The fact that plaintiffs waived their right to redemption under Section 5 of the Real Estate Mortgage does not make such provision pactum commissorium. The right of redemption, which is a consequence of foreclosure, may be waived and does not run counter to the prohibition on pactum commissorium. Such waiver is likewise not against public policy, morals and/or good customs.

9. Besides, even assuming arguendo that the waiver by plaintiffs of the right of redemption is void, only that portion of the Real Estate Mortgage may be declared void and not the entire agreement which can exist independently without the waiver.”

As stated earlier, the trial court, in its August 16, 2000 Decision, held the REM valid but declared the waiver of the right of redemption null and void.

Not satisfied, plaintiffs-appellants seek the intercession of this Court anchoring their plea on the following:

ASSIGNMENT OF ERRORS

I

THE LOWER COURT ERRED IN DECLARING VALID THE REAL ESTATE MORTGAGE DATED APRIL 19, 1996 WHILE RULING THAT THE WAIVER OF THE RIGHT OF REDEMPTION IS CONTRARY TO LAW.

II

THE LOWER COURT ERRED IN HOLDING THAT THERE IS NO PACTUM COMMISSORIUM.

III

THE LOWER COURT ERRED IN HOLDING THAT THERE WAS SUBSTANTIAL COMPLIANCE WITH THE REQUIREMENTS OF ACT 3135 ON THE EXTRAJUDICIAL FORECLOSURE OF APPELLANTS' MORTGAGED PROPERTIES.

In their Appeal Brief,[4] plaintiffs-appellants argue that the illegal provision in paragraph 5 of the mortgage contract pertaining to the waiver of the right of redemption entirely affected said mortgage contract and, so, said contract is null and void for being contrary to law. They claim that due to the waiver of the right of redemption provision, said contract qualifies as an “automatic appropriation” and, therefore, null and void because the security is in substance a pactum commissorium. They argue that defendants-appellees would not have entered into the contract and extended the loan to them without incorporating in the contract said waiver provision.

Moreover, they contend that the promissory notes and the real estate mortgage contract they executed were prepared contract forms of defendant bank and that their only participation was to affix their signatures thereon. Citing jurisprudence on the matter, it is their position that since it was the defendant bank which prepared the said documents, any doubt or ambiguity in the terms thereof must be construed against it. Lastly, plaintiffs-appellants espouse the position that there was no substantial compliance with the requirements of Act No. 3135 on extrajudicial foreclosure on the ground that there was 1) no posting of the notices of the extrajudicial foreclosure sale; 2) no publication of the notice of extrajudicial foreclosure in a newspaper of general circulation in the province where the properties are located; and 3) no public auction sale conducted.

Traversing plaintiffs-appellants' arguments, defendants-appellees counter[5] that contracts of adhesion per se are not null and void outright because the validity and/or enforceability of which depends on the peculiar circumstances obtaining in each case and the nature of the conditions or terms sought to be enforced; that assuming that said mortgage contract is one of adhesion, such fact does not ipso facto render the same null and void; that plaintiffs-appellants failed to cite any provision in the mortgage contract that is obscure or unclear necessitating interpretation thereof; that plaintiffs-appellants never raised as an issue before the trial court that it intended that it would be bound by said mortgage contract only if the waiver of the right of redemption appearing on paragraph 5 thereof was incorporated therein; that plaintiffs-appellants admitted that they voluntarily executed said mortgage contract to secure the fulfillment of their loan obligations with defendant bank; that having complied with the legal requirements of a valid real estate mortgage, there is no doubt that said mortgage contract is valid; that said mortgage contract does not provide for an automatic appropriation of the mortgaged properties in the event of non-payment of the principal obligations; that plaintiffs-appellants only authorized it to foreclose said mortgaged properties, at the latter's option, in case of default; that the authority to foreclose said mortgaged properties is not equivalent to automatic appropriation as said contract did not contain any stipulation for it; that copies of the notice of extrajudicial foreclosure were posted in three public places and it was published once a week for three consecutive weeks in a newspaper of general circulation in the Philippines; and that a public auction was held on April 17, 1998.

The instant case, thus, poses the following issues: (1) whether or not the subject REM is valid for being a contract of adhesion, for being obscure, and for containing the waiver of the right of redemption; (2) whether or not the subject REM was actually a pactum commissorium because there was an "automatic appropriation" clause; and (3) whether or not there was compliance with the requirements of Act No. 3135 on extrajudicial foreclosure.

After carefully weighing the arguments advanced by both parties, We find the appeal bereft of merit. The April 19, 1996 REM[6] containing a waiver of the right of redemption is not entirely invalid. In the execution of the subject REM, all the essential requirements of a mortgage as provided under Article 2085 of the Civil Code have been complied with. Said article reads:

"Art. 2085. The following requisites are essential to the contracts of pledge and mortgage:

- (1) That they be constituted to secure the fulfillment of a principal obligation;
- (2) That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged;
- (3) That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for that purpose.

Third persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property."

Plaintiffs-appellants do not deny the fact that they voluntarily executed the subject REM. Neither do they deny that they defaulted in the payment of the obligations. The fact that the provisions of the subject REM were not explained to them is of no moment because plaintiffs-appellants should have asked the defendant bank, their own lawyer or any knowledgeable person about provisions not clear to them. It could not also be said they were coerced into signing it.

The fact that the subject REM were all in the nature of contracts of adhesion as they were "prepared contract forms," does not render the agreement inefficacious per se.

"A contract of adhesion is one in which one of the parties imposes a ready-made form of contract, which the other party may accept or reject, but which the latter cannot modify. In other words, in such contract, the terms

therein are fixed by one party, and the other party has merely “to take it, or leave it.” Thus, it can be struck down as void and unenforceable for being subversive of public policy, especially when the will of the dominant party is imposed upon the weaker party and the latter is denied the opportunity to bargain on equal footing.

It must be stressed, however, that contracts of adhesion are not strictly against the law. In *Ong Yiu vs. Court of Appeals*[7] and *Pan American World Airways, Inc. vs. Intermediate Appellate Court*,[8] we held that contracts of adhesion – wherein one party imposes a ready-made form of contract on the other – are not entirely prohibited. The other is free to reject it entirely; if he adheres, he gives his consent.

Nevertheless, the inequality of bargaining positions and the resulting impairment of the other party’s freedom to contract necessarily call upon us to exercise our mandate as a court of justice and equity. Indeed, we have ruled that contracts of such nature ‘obviously call for greater strictness and vigilance on the part of the courts of justice with a view to protecting the weaker party from abuses and imposition and prevent their becoming traps for the unwary.’”[9]

In the subject REM, however, there is no obscure or ambiguous provision necessitating interpretation. Even the provision on the waiver of the right of redemption is clear. Specifically, paragraph 5 of the subject REM reads:

“In the event that the Mortgagor herein should fail or refuse to pay any of the sums of money secured by this mortgage, or any part thereof, in accordance with the terms and conditions herein set forth, or should he/it fail to perform any of the conditions stipulated herein, then and in any such case, the Mortgagee shall have the right, at its election, to foreclose this mortgage, and to that end the President of the Mortgagee at the time or his substitute is hereby appointed the attorney-in-fact of the Mortgagor, with full power of substitution, to enter upon and take possession of the mortgaged properties without the order of any court or any authority other than that herein granted, and to sell and dispose of the same to the highest bidder at public auction after the publication of notice, in accordance with the provisions of Act 3135 of the Philippine Legislature. In such case and before the mortgaged property is sold, the Mortgagee is authorized (a) to hold and retain possession of said properties, (b) to collect all rents due on the same and to apply such rents to the payment of the indebtedness hereby secured and (c) to perform all other acts of administration and management in the most advantageous manner for the best interests of the Mortgagee and Mortgagor.

In case of the sale pursuant to the provisions of this paragraph, such sale, whether made to the Mortgagee or to any other person or persons, shall be made free from any right of redemption granted by Section 6 of said Act No. 3135 as Amended by Act 4118, and Sec. 78, Rep. Act No. 337, being hereby expressly waived by the Mortgagor, and the said President of the Mortgagee at the time, or his substitute or substitutes, is/are hereby expressly authorized and empowered at such sale to execute and deliver, on behalf of the Mortgagor or in his/its name and stead, such deeds of conveyances as may be necessary or proper for the purpose of vesting in the purchaser at such sale full, complete and absolute title to the property so sold, free from all liens and encumbrances whatsoever.

It is true that under Article 2088 of the Civil Code, “the creditor cannot appropriate the things given by way of pledge or mortgage or dispose of them. Any stipulation to the contrary is null and void.” A perusal of paragraph 5 of the subject REM, however, clearly shows that it does not grant or favor an “automatic appropriation” or pactum commissorium. It does not so because the defendant bank would still foreclose on the mortgage, the procedures therefor having been laid down by law, specifically, Act. 3135.

We, however, agree with the trial court that the waiver of the right of redemption violated the law and public policy. Section 78 of the General Banking Act provides:

“... In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real estate which is security for any loan granted before the passage of this Act or the provisions of this Act, the mortgagor or

debtor whose real property has been sold at public auction, judicially or extrajudicially, for the full or partial payment of an obligation to any bank, banking or credit institution, within the purview of this Act shall have the right, within one year after the sale of the real estate mortgage as a result of the foreclosure of the respective mortgage, to redeem the property by paying the amount fixed by the court in the order or execution.. . ."

Thus, We are in conformity with the trial court's position on the issue, including the matter of pactum commissorium, which is herein quoted as follows:

"xxx This Court is of the opinion that there is no "pactum commissorium" as plaintiffs alleged. The Real Estate Mortgage did not authorize the bank to immediately appropriate the property mortgaged, but that the bank had to resort to foreclosure in case of failure to pay. In fact, the bank applied for the extra-judicial foreclosure of the mortgage through Atty. Maximo Silao, the notary public.

How about the waiver of the right of redemption under Act 3135 and under the General banking Act? It must be noted that these two laws granted mortgagors the right of redemption, within one year from registration of the certificate of sale. The fact that these two laws granted mortgagors the right of redemption indicates that the state favors redemption as a right, as a last ditch effort to retain the property. The Supreme Court had in fact ruled that it is the policy of the law to grant rather than defeat right of redemption. (Bandiongan vs. Court of Appeals, 248 SCRA 496)

Rights maybe waived except when the waiver is contrary to law. It is the opinion of this Court that the waiver of redemption as provided in the mortgage contract is void. In fact, the General Banking Act requires the bank to dispose of acquired assets within a certain period. The redemption is a privilege granted to the owner to regain his property. The Court therefore rules that the waiver of redemption is contrary to law."

On its effect, it is Our considered view that the invalidity of the provision on the waiver of the right of redemption did not render the entire subject REM null and void.

Article 1420 of the Civil Code provides:

"Art. 1420. In case of a divisible contract, if the illegal terms can be separated from the legal ones, the latter may be enforced.

As a general rule, Article 1420 is applied if there are several stipulations in the contract, some of which are valid and some void. "If the stipulations can be separated from each other, then those which are void will not have any effect, but those which are valid will be enforced. In case of doubt, the contract must be considered as divisible or separable." [10] It is Our view that the subject REM agreement is divisible because it can stand without the secondary agreement. In the case of *Litonjua v. L & R Corporation*, G.R. No. 130722, March 27, 2000, it was held that the legal terms of a contract may be enforced when "the invalid stipulation is independent from the rest of the terms of the agreement and can easily be separated therefrom without doing violence to the manifest intention of the parties."

"The rule of divisibility given in this article, however, has two exceptions: (1) when the nature of the contract requires indivisibility, and (2) when the intention of the parties is that the contract be entire." [11]

We have examined the document, but We do not see it falling under the two exceptions. The subject REM is a contract to secure the payment of the obligations under the promissory notes executed by the plaintiffs-appellants. The security is the principal stipulation. The provision on the waiver of the right of redemption is merely a secondary one as it refers to the rights of the mortgagors after the foreclosure

As to the alleged intention of the parties, there is no clear evidence that the waiver was an indispensable consideration of the mortgage agreement. There is no question that the defendant bank intended it as it was the

one who prepared it. The plaintiffs-appellants, however, failed to present evidence that it was their clear intention that the contract be indivisible.

In the case of *Carpo v. Chua*, G.R. Nos. 150773, September 30, 2005, it was held that the invalidity of the usurious interest does not affect the validity of the principal obligation. In said case, the Supreme Court explained that “since the mortgage contract derives its vitality from the validity of the principal obligation, the invalid stipulation on interest rate is similarly insufficient to render void the ancillary mortgage contract.”

Neither could it be said that the consent of plaintiffs-appellants to the loan and mortgage agreements was vitiated by undue influence. Their financial problems may have compelled them to borrow from defendant bank, but undue influence cannot be attributed to the latter just because they lent the money under those conditions. While the plaintiffs-appellants were in financial need, it was not proven that there was deprivation of their free agency. “For undue influence to be present, the influence exerted must have so overpowered or subjugated the mind of a contracting party as to destroy his free agency, making him express the will of another rather than his own.” (Ibid)

Anent their last assigned error, plaintiffs-appellants insist that the defendants-appellees failed to comply with the posting and publication requirements under Act No. 3135 entitled “An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgages.” In fact, they assert that there was no public auction held by Notary Public Atty. Max Silao in the afternoon of April 17, 1998 at the main entrance of the municipal building of Tarlac, Province of Tarlac.

Elaborating, plaintiffs-appellants pointed out that there was no posting of the notice because the Affidavit of Posting,[12] dated June 10, 1998, failed to mention the number of days required for the posting of notice and identify the three (3) public places. Moreover, there was no publication of said notice in a newspaper of general circulation in the province where the properties are located because it was published in the “Thunderer,” a newspaper of general circulation in the Philippines, but not in Tarlac, Tarlac, where the properties are located.

On the posting and publication of notices, Section 3 of Act No. 3135 provides as follows:

“Sec. 3 Publication of notices. – 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 xxx 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.”

A reading of the Affidavit of Posting of Atty. Maximo Silao, dated March 9, 1998,[13] shows that he failed to mention the places where he posted copies of the notices. This failure to identify, however, is not fatal. Atty. Maximo Silao himself testified that he, together with the personnel of the Agulto Law Office, actually posted the notice of sale at the municipality, the Westmont Bank and the court premises.[14]

This claim was not satisfactorily refuted by the plaintiffs-appellants. Plaintiffs-appellants’ witnesses testified that they had checked the bulletin board at the lobby of the municipal building of Tarlac but they did it only on April 17, 1998, when more than twenty days had already lapsed, the posting having been made by Notary Public Atty. Silao on March 9, 1998.

The fact that there was no certificate of posting is of no moment. What is essential is the actual posting of the notice of sale and not the execution of the certificate of posting. In the case of *DBP vs. Court of Appeals*, G.R. No. 125838, June 10, 2003, it was stated:

“This Court ruled in *Cristobal v Court of Appeals*[15] that a certificate of posting is not required, much less considered indispensable for the validity of an extrajudicial foreclosure sale of real property under Act No. 3135. *Cristobal* merely reiterated the doctrine laid down in *Bohanan v. Court of Appeals*.[16] In the present

case, the foreclosing sheriffs failed to execute the certificate of posting of the auction sale notices. However, this fact alone does not prove that the sheriffs failed to post the required notices. As held in Bohanan, “the fact alone that there is no certificate of posting attached to the sheriff’s records is not sufficient to prove the lack of posting.”

On the alleged lack of publication in a newspaper of general circulation in the place where the properties are located, plaintiffs-appellants argue that the “Thunderer,” the newspaper where the notice of public auction was published once a week for three (3) consecutive weeks, was not a newspaper of general circulation in Tarlac, where the subject properties are located, but for the whole Philippines..

The publication requirement can be found in Section 1 of Presidential Decree No. 1079 (P.D. No. 1079):

SECTION 1. All notices of auction sales in extra-judicial foreclosure of real estate mortgage under Act No. 3135 as amended, judicial notices such as notices of sale on execution of real properties, notices in special proceedings, court orders and summonses and all similar announcements arising from court litigation required by law to be published in a newspaper or periodical of general circulation in particular provinces and/or cities shall be published in newspapers or publications published, edited and circulated in the same city and/or province where the requirement of general circulation applies: Provided, That the province or city where the publication's principal office is located shall be considered the place where it is edited and published: Provided, further, That in the event there is no newspaper or periodical published in the locality, the same may be published in the newspaper or periodical published, edited and circulated in the nearest city or province: Provided, finally, That no newspaper or periodical which has not been authorized by law to publish and which has not been regularly published for at least one year before the date of publication of the notices or announcements which may be assigned to it shall be qualified to publish the said notices.

“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; and that it is published at regular intervals. The newspaper must not also be devoted to the interests or published for the entertainment of a particular class, profession, trade, calling, race or religious denomination.[17] The newspaper need not have the largest circulation so long as it is of general circulation.” (Perez v. Perez, G.R. No. 143768, March 28, 2005)

Records show that the Notice of Extrajudicial Sale was published in the “Thunderer” on March 9, 16, and 23, 1998 as evidenced by the Affidavit of Publication,[18] dated March 25, 1998, with copies of the newspapers attached.[19] As the “Thunderer” is a newspaper of general circulation in the Philippines, it constitutes prima facie evidence of compliance with the requisite publication. The plaintiffs-appellants should have proven that said newspaper was not circulated in Tarlac.

On the requirements of a public auction, Section 4 of Act No. 3135 provides:

“Sec. 4 Public auction. – 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, xxx or a notary public of said municipality xxx.”

The plaintiffs-appellants presented two witnesses to prove that no public auction was held on April 17, 1998. The first was Evelyn Dizon who testified, among others, that she arrived at the municipal building of Tarlac at around 2:00 o’clock in the afternoon to attend the auction sale; that she inquired from the front desk information officer where Atty. Silao was and the latter replied that he was “just somewhere”; [20] that she waited for Atty. Silao to arrive until past 3:00 o’clock in the afternoon, but she did not see him;[21] that she then reported to the office of plaintiff-appellee Engineer Jose Efren Rigor and informed him that no public auction sale was conducted; that after two days, she went back, upon instructions of Engr. Rigor, to the office of Atty. Silao to secure some documents regarding the foreclosure;[22] that Atty. Silao told her that no auction sale was held on April 17,

1998;[23] and that one or two weeks later, she went back to the office of Atty. Silao and was able to secure the foreclosure documents.[24]

On cross-examination, Evelyn Dizon replied that she did not bring any money that would be used as payment for the auction sale as she was only instructed by Engr. Rigor to oversee the auction sale.[25] On questioning by the trial court, she clarified that she did not go to the Office of the Register of Deeds to verify about the auction sale because she was instructed by her boss to just go to the municipal building.[26]

Engineer Rigor himself took the witness stand and testified, among others, that he arrived at the municipal building between 2:00 and 2:10 o'clock in the afternoon;[27] that a security guard and some people in the premises told him that Atty. Silao was not around;[28] that he stayed in the lobby of said municipal building until 2:25 o'clock when he proceeded to the Office of the Register of Deeds to look for Evelyn Dizon because he asked her to do something for him at said office; and that he stayed for about 15 minutes at said office waiting for Evelyn Dizon.[29]

Engineer Rigor further stated that after returning to his office on that same day, he immediately instructed Evelyn Dizon to go to the office of Atty. Silao to secure some documents; that Evelyn Dizon went back and forth to the office of Atty. Silao for about three (3) times but got no documents; that he went to his lawyer who told him that he (lawyer) would file a request; that after the request, he was able to secure the documents he wanted;[30] and that if the auction sale was held, he could have witnessed the same and participated in the bidding since the money for the bid was brought by Evelyn Dizon.[31]

No assiduous assessment is needed to tell that the both witnesses lack credibility. To begin with, both of them claimed that at almost the same time, they went to the municipal building where they stayed for a considerable time but they did not see each other. We find this hard to believe considering that they had the same purpose in going to said building.

Then Engineer Rigor related that he even went to the Office of the Register of Deeds to look for Evelyn Dizon as he had asked her to do something for him there. When Evelyn testified, however, she denied going to said office as the instruction to her was just to go to the municipal building.

More significant, Engineer Rigor claimed that they were ready to participate in the bidding because Evelyn Dizon brought the money. This claim, however, was belied by Evelyn Dizon herself when she denied having brought with her the money intended for the bidding.

WHEREFORE, the August 16, 2000 Decision of the Regional Trial Court, Branch 63, Tarlac City, in Civil Case No. 8657, is hereby AFFIRMED.

SO ORDERED.

Asuncion, (Chairman) and Tayag, JJ., concur.

[1] Decision, Records, p. 134-136

[2] Records, pp. 2-7

[3] Records, pp. 41-46

[4] Rollo, pp. 20-40

[5] Rollo, pp. 77-95

- [6] Records, pp. 8-11
- [7] G.R. No. L-40597, June 29, 1979, 91 SCRA 223
- [8] G.R. No. L- 70462, August 11, 1988, 164 SCRA 268
- [9] PNB v. de Jesus, GR. No. 149295, September 23, 2003
- [10] Tolentino, Civil Code of the Philippines, Commentaries and Jurisprudence, Vol. IV, pp. 644-645
- [11] Ibid
- [12] Records, p. 124
- [13] Records, p. 124
- [14] TSN, March 16, 2000, p. 54
- [15] G.R No. 124372, 16 March 2000, 328 SCRA 256
- [16] G.R. No. 111654, 18 April 1996, 256 SCRA 355
- [17] Citing Fortune Motors v. Metropolitan Bank, G.R. No. 115068, November 28, 1996, 265 SCRA 72
- [18] Records, p. 106
- [19] Records, pp. 126-128
- [20] TSN, May 31, 1999, pp. 5-6
- [21] TSN, May 31, 1999, pp. 8-9
- [22] TSN, May 31, 1999, pp. 10-11
- [23] TSN, May 31, 1999, p. 11
- [24] TSN, May 31, 1999, p. 12
- [25] TSN, May 31, 1999, p. 15
- [26] TSN, May 31, 1999, p. 22
- [27] TSN, December 10, 1999, p. 35
- [28] TSN, December 10, 1999, p. 20
- [29] TSN, December 10, 1999, pp. 21-23
- [30] TSN, December 10, 1999, pp. 27-29
- [31] TSN, December 10, 1999, p. 37

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