

**SPOUSES JESUS RUIZ AND AMPARO SAMBENITO RUIZ,
PETITIONERS-APPELLANTS, VS. SHERIFF OF MANILA AND THE BANK
OF THE PHILIPPINE ISLANDS, RESPONDENTS-APPELLEES.**

G.R. No. L-24016. July 31, 1970

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This appeal from the decision of the Court of First Instance of Manila was taken originally to the Court of Appeals but was subsequently certified to this Court, there being no question of fact involved.

On January 18, 1961 the spouses Jesus Ruiz and Amparo Sambenito Ruiz executed in favor of the Bank of the Philippine Islands a real estate mortgage covering a parcel of land situated in Sta. Ana, Manila, as security for a loan of P15,000.00 which they obtained from said bank. The mortgage contract provided, among other things, the following:

"WHEREAS, the parties of the FIRST PART, jointly and severally, has/have applied for and jointly and severally obtained from the party of the SECOND PART, a loan in the sum of FIFTEEN THOUSAND PESOS (P15,000.00), Philippine currency, to be amortized at the rate of not less than P300.00, including interest on unpaid balance, at the rate of 8% per annum, said in-terest and capital amortization to be effected at the end of each month. Failure to pay two successive monthly amortizations will cause this loan to be automatically due and payable in its entirety. Notwithstanding the foregoing, this loan shall not run for, more than 5 years."

In view of the default of the mortgagors in the pay-ment of twelve (12) successive monthly amortizations (December 1961 up to and including November 1962) notwithstanding several demands made on them, the mortgage asked the Sheriff of Manila to foreclose the mortgage extra judicially. Accordingly, the Sheriff set the auction sale of the mortgaged property for February 7, 1963 and notice thereof was published in the "Daily Record". Upon receipt of a copy of the notice of sale the mortgagors requested the mortgage to cause the postponement of the auction sale and to give them tithe until March 15, 1963 within which to pay their obligation, as well as the cost of the new publication of the sheriff's notice of sale, if any. Granting the request, the mortgage in turn made representations with the Sheriff to postpone the sale, whereupon a new, notice was issued, resetting it for March 18, 1963 at 10:00 o'clock in the morning. Said notice was again published in the "Daily Record".

Upon failure of the mortgagors to comply with their promise to pay, the Sheriff proceeded to sell the mortgaged property on March 18, 1963, as scheduled, with the mortgage as the highest bidder. Since the mortgage's bid of P15,173.74 represented the total mortgage indebted-ness, the Sheriff did not collect cash but merely applied the same to the amount of bid.

On March 30, 1963 the mortgagors filed with the lower court an amended petition for certiorari, injunction, and/or prohibition seeking, as principal relief, the annulment of the foreclosure sale. After proper hearing the trial court rendered its decision dismissing the case for being "devoid of any merit". Thereupon, the appellants instituted the instant appeal.

In seeking the reversal of the decision of the lower court the appellants assign two errors, namely: (1) in not declaring the foreclosure of the real estate mortgage pre-mature and therefore illegal; and (2) in not declaring the said foreclosure sale null and void for failure to comply with the requirements prescribed by law.

With respect to the first assigned error, the appellants lay stress on the following last two sentences of the provision of the mortgage contract quoted above, to wit:

x x x. Failure to pay two successive monthly amortizations will cause this loan to be automatically due and payable in its entirety. Notwithstanding the foregoing, this loan shall not run for more than 5 years."

Interpreting the above stipulation, the appellants claim that despite the acceleration clause they had five years from January 18, 1961 within which to pay their mortgage debt because of the phrase "notwithstanding the foregoing" in the last sentence. Since the five year period had not yet expired when the mortgage was foreclosed, said foreclosure, they point out, was premature.

The appellant's interpretation is totally without merit. To ascertain the meaning of the provision of the mortgage contract relied upon by the appellants, its entirety must be taken into account and not merely its last two sentences. A reading of the entire provision will readily show that while the appellants were allowed to amortize their loan at the rate of not less than P300.00 a month, they were under obligation to liquidate the same within a period of not more than five (5) years from the date of the execution of the contract; but if they should fail to pay two successive monthly amortizations, then the entire loan would be due and payable. It is obvious that the phrase "notwithstanding the foregoing" does not refer to the acceleration clause but to the stipulation that the loan had to be "amortized at the rate of not less than P300.00, including interest on unpaid balance, at the rate of 8% per annum, said interest and capital amortization to be effected at the end of each month". There is nothing inconsistent between the acceleration clause and the last sentence. All that the parties meant is that while monthly amortizations could be as little as P300.00 the loan should anyway be paid within 5 years; and that failure to pay two successive amortizations would render the entire loan due and payable. Consequently, default having been committed for twelve months, the foreclosure of the mortgage was not premature.

Under the second assignment of error, the appellants challenge the validity of the foreclosure sale on two grounds, namely: (1) that the "Daily Record" wherein the notice of sheriff's sale was published was not a newspaper of general circulation; and (2) that the appellee bank should have paid cash for its bid since Section 5 of Act No. 3135 expressly requires that the creditors must bid "under the same condition as any other bidder."

Neither of the grounds is meritorious. For purposes of extra judicial foreclosure of mortgage the party alleging non-compliance with the requisite publication has the burden of proving the same. In the instant case the appellants did not present evidence to show that the "Daily Record" was not a newspaper of general circulation. As correctly stated by the lower court:

x x x. But, the presumption is that the sheriff had complied with his official duty according to law and this presumption includes the presumption that the sheriff had caused the notice of sale to be published in a newspaper of general circulation so that, if the 'Daily Record' is not a newspaper of general circulation as petitioners claim, it is incumbent upon them to prove such fact, which they failed to do."

As to the second ground, it was not necessary for the appellee, as the highest bidder, to pay cash to the sheriff, since the amount of its bid represented the total mortgage debt. It would serve no purpose for the sheriff "to go through the ceremony of receiving the money and paying it back to the creditor". Certainly the law-making body did not contemplate such a senseless application of the law in requiring that the creditor must bid "under the same condition as any other bidder."

WHEREFORE, the decision appealed from is hereby affirmed, with costs against the appellants.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.

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