

**IN RE: PETITION FOR THE ISSUANCE OF A WRIT OF POSSESSION
(SPOUSES WILFREDO PALADA, SR./ ELENA PALADA REPRESENTED
BY THEIR ATTORNEY IN FACT, SPOUSES WILFREDO PALADA, JR./
BRIGI...**

Ponente: SORONGON, J.

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SORONGON, J.:

This is an appeal from the Joint Decision[1] dated December 18, 2009 of the Regional Trial Court (RTC) of Santiago City, Branch 35, in the consolidated Special Civil Action (SCA) Case No. 35-0210 and Civil Case No. 35-3233, the fallo of which reads:

"WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered in favor of the plaintiffs and against the defendant bank: 1] NULLIFYING the sheriff's certificate of sale issued by Sheriff Mayo S. Dela Cruz dated February 27, 2002 (Exhibit "6"); 2] CANCELLING defendant bank's consolidated TCT Nos. T-333915, T-333916, T-333917, T-333918, and T-333919, all for want of legal basis, and REINSTATING plaintiffs' TCT as follows: TCT No. T-203069 and T-230394 for plaintiffs spouses Wilfredo Palada, Jr. and Brigada Pastorin; TCT No. T-197385 and T-160618 for plaintiffs spouses Andres and Carmen Pastorin; and TCT No. T-106964 for plaintiffs spouses Wilfredo Palada, Sr. and Elena Domingo; 3] DENYING the issuance of a writ of possession; and finally, ORDERING the defendant bank to pay to the plaintiffs the following: a) Php.100,000.00 moral damages; b) Php.50,000.00 exemplary damages; and c) attorney's fees of Php.100,000.00.

SO ORDERED."

Gathered from the records are the following antecedents:

Spouses Wilfredo Palada, Jr. and Brigida Pastorin (spouses Palada, Jr. for brevity) obtained a loan from the Bank of the Philippine Islands (BPI) formerly Far East Bank and Trust Company and as security therefor, they executed the following Real Estate Mortgages (REM) in favor of BPI, viz:

a)

REM dated January 16, 1996[2] over Transfer Certificate of Title (TCT) No. T-203069[3] and TCT No. T-106964[4] both registered under the name of Elena Domingo married to Wilfredo Palada, Sr. to secure the loan in the amount of Php800,000.00;

b)

REM dated July 12, 1996[5] over TCT Nos. T-160618[6] and T-197385[7] registered under the name of Andres Pastorin married to Carmen Pastorin to secure the loan in the amount of Php150,000.00; and

c)

REM dated July 12, 1996[8] over TCT No. T-230394[9] registered under the name of Wilfredo D. Palada, Jr. married to Brigida P. Palada to secure the loan in the amount of Php50,000.00.

Spouses Wilfredo Palada, Sr. and Elena Domingo (spouses Palada, Sr.) and spouses Andres and Carmen Pastorin (spouses Pastorin) lent their certificates of title to spouses Palada, Jr. to be used by the latter as security for their loan with BPI, as evidenced by a Special Power of Attorney.[10]

Spouses Palada, Jr. failed to pay their loans prompting BPI to extrajudicially foreclose the properties covered by the REM. As the highest bidder in the auction sale held on January 18, 2002, BPI acquired the mortgaged properties in the sum of Php3,289,000.00. A certificate of sale[11] was then issued in favor of BPI which was duly registered with the Office of the Register of Deeds of Isabela and annotated in the respective certificates of title of the foreclosed properties. After the lapse of the one-year redemption period, BPI executed an affidavit of consolidation[12] on the foreclosed properties. Forthwith, TCT Nos. T-203069, T-230394, T-197385, T-160618 and T-106964 were cancelled and in lieu thereof, TCT Nos. T-333915,[13] T-333916,[14] T-333917,[15] T-333918,[16] and T-333919[17] were issued in the name of BPI.

Despite the consolidation of ownership over the foreclosed properties in the name of BPI, the former owners refused to vacate the said properties. Thus, on November 24, 2003, BPI filed a petition[18] for the issuance of a writ of possession which was docketed as SCA Case No. 35-0210 with the Regional Trial Court of Santiago City, Branch 35.

To quell the impending issuance of the writ of possession, spouses Palada, Sr., spouses Pastorin and Wilfredo Palada, Jr. (collectively referred herein as plaintiffs-appellees) filed a Complaint for Nullity of Sheriff's Certificate of Sale over the properties covered by TCT Nos. T-333915, T-333916, T-333917, T-333918 and T-333919 and Damages[19] docketed as Civil Case No. 35-3233 which was also raffled to RTC, Branch 35. This case was later on consolidated[20] with SCA Case No. 35-0210 on the ground that both cases involved the same properties and raised same issues.

Mainly, plaintiffs-appellees contended that a separate foreclosure proceeding should have been conducted on the three REMs because the loan obligations are separate and distinct from one another and each is secured by different collaterals. Thus, the certificate of sale and the TCT's issued in the name of BPI should be nullified since the foreclosure proceeding was improperly conducted.

On December 18, 2009, the RTC rendered a Joint Decision[21] in favor of plaintiffs-appellees declaring that the foreclosure proceeding conducted by the sheriff was ineffective. The three REMs are separate and distinct from each other, hence, should have been separately foreclosed. It further held that there was no valid transfer of title in the name of BPI because the affidavit of consolidation of ownership was undated and unregistered with the Register of Deeds.

Aggrieved, BPI sought for reconsideration[22] but the RTC denied its motion by Order[23] dated May 18, 2010.

Via this appeal BPI now seeks redress based on the following assignment of errors:

- THE LOWER COURT GRAVELY ERRED IN RULING THAT THE THREE REAL ESTATE MORTGAGES (REMs) ARE SEPARATE AND DISTINCT FROM EACH OTHER AND THAT EACH REM SECURES ONLY THE OBLIGATION MENTIONED THEREIN;
- THE LOWER COURT GRAVELY ERRED IN RULING THAT THERE SHOULD BE SEPARATE FORECLOSURE PROCEEDINGS AND NOT JUST ONE SINGLE FORECLOSURE;
- THE LOWER COURT GRAVELY ERRED IN RULING THAT THERE WAS NO PROPER CONSOLIDATION OVER THE FORECLOSED MORTGAGED PROPERTIES SINCE THE AFFIDAVIT OF CONSOLIDATION IS UNDATED AND UNREGISTERED; AND
- THE LOWER COURT GRAVELY ERRED IN AWARDING DAMAGES AND ATTORNEY'S FEES TO

PLAINTIFFS-APPELLEES SPOUSES PALADA.

We discuss the first and second issues jointly.

BPI claimed that while there are three separate deeds of REM executed by Spouses Palada, Jr., it does not mean that it only covers the amount stated in each deed. The three REMs secured all the obligations incurred by the spouses from the bank as provided in the three deeds of REM. They (REM) are indivisible and could not be foreclosed separately.

We do not agree.

It is very clear that the three loan obligations of the spouses Palada, Jr. are secured by three separate and distinct collaterals. So plain to see that the amount of loan is specifically stated in each deed and the property/ies mortgaged is as well annotated at the back of each deed. For example, The REM executed on January 16, 1996[24] which provides for the loan of Php800,000.00 is secured by TCT Nos. T-203069 and T-106964. The annotations in the TCT's[25] show the particular amount of loan secured by the respective titles, i.e. TCT No. T-203069[26] has Entry No. 6927 which states that "Mortgage together with T-106964 for the sum of Php800,000.00 executed by SPS. WILFREDO PALADA, JR. & BRIGIDA PALADA in favor of the FAR EAST BANK & TRUST COMPANY xxx". If spouses Palada, Jr. intended to make the subject five properties as collateral to all their loan obligations from the bank, they should have specifically annotated all the titles at the back of each of the deeds of REM and entries should have been made at the title of each of the property stating the amount loaned. But as shown by the annotations at the back of the deeds of REM and the entries in the certificates of title of the subject properties, the spouses have three separate loan obligations secured by separate and distinct collaterals. Each five properties secured a particular loan and does not cover all or the totality of the loans obtained by spouses Palada, Jr. The RTC was therefore correct that a separate foreclosure proceeding should have been conducted for each of the REM, and not via a single foreclosure proceeding, as what happened.

Moreover, it must be stressed that not all the properties mortgaged are owned by the spouses Palada, Jr. Notably, TCT Nos. T-203069 and T-106964 are owned by spouses Palada, Sr. and TCT Nos. T-160618 and T-197385 are registered under the name of the spouses Pastorin. Spouses Palada, Sr. and spouses Pastorin only lent their certificates of title to spouses Palada, Jr. to be used by the latter as security for their loan with BPI. In short, both spouses Palada, Sr. and spouses Pastorin acted only as accommodation mortgagors of spouses Palada, Jr. who were the real and actual loan borrowers. Jurisprudence has ruled that when an accommodation-mortgagor exercise his right to redeem his property mortgaged by the debtor-mortgagor from the winning bidder, the redemption price would only be the winning bid price plus interest at the public auction sale and not the entire liability plus interest of the debtor-mortgagor. The rationale behind such doctrine is explained by the Supreme Court in the case of Spouses Belo vs. PNB,[27] to wit:

xxx xxx xxx respondent PNB has no claim against accommodation mortgagor Eduarda Belo inasmuch as she only mortgaged her property to accommodate the Eslabon spouses who are the loan borrowers of the PNB. The principal contract is the contract of loan between the Eslabon spouses, as borrowers/debtors, and the PNB as lender. The accommodation real estate mortgage (which secures the loan) is only an accessory contract.

xxx xxx xxx On the other hand, accommodation mortgagors as such are not in anyway liable for the payment of the loan or principal obligation of the debtor/borrower. The liability of the accommodation mortgagors extends only up to the loan value of their mortgaged property and not to the entire loan itself. Hence, it is only just that they be allowed to redeem their mortgaged property by paying only the winning bid price thereof (plus interest thereon) at the public auction sale.

xxx xxx xxx While the petitioners, as assignees of Eduarda Belo, are not required to pay the entire claim of

respondent PNB against the principal debtors, spouses Eslabon, they can only exercise their right of redemption with respect to the parcel of land belonging to Eduarda Belo, the accommodation mortgagor. Thus, they have to pay the bid price less the corresponding loan value of the foreclosed four (4) residential lots of the spouses Eslabon.

Guided by the foregoing pronouncement of the High Court, it becomes imperative that the mortgaged property of the spouses Palada, Jr. should have been foreclosed separately from the properties of the spouses Palada, Sr. and spouses Pastorin to determine the redemption price of their respective properties. That way, should they also elect to redeem the same from the winning bidder, which in this case, BPI, the spouses Palada, Sr. and spouses Pastorin would know the redemption amount to be bidded out. As ruled in the above case, spouses Palada, Sr. and spouses Pastorin should only pay the winning bid price plus interest at the public auction sale and not the entire liability of Php3,289.00.00 (plus interest) of the spouses Palada, Jr. There being only a single foreclosure proceeding held for all the loan obligations of the spouses Palada, Jr., the redemption price due to each of the accommodation mortgagors has been left undetermined. Hence, we sustain the ruling of the RTC that there should be a separate foreclosure for each of the loan obligations of the spouses Palada, Jr.

Finding that the foreclosure proceeding was improperly conducted, we deem it no longer necessary to discuss the issue that there was no proper consolidation of the ownership of the foreclosed properties to BPI as all acts done subsequent to the foreclosure sale are also deemed improper.

Anent the award of moral and exemplary damages as well as attorney's fees, we find the same to be without legal and factual basis. For moral damages to be awarded, the Supreme Court in *Mahinay vs. Atty. Velasquez, Jr.*,^[28] explained:

In order that moral damages may be awarded, there must be pleading and proof of moral suffering, mental anguish, fright and the like. While respondent alleged in his complaint that he suffered mental anguish, serious anxiety, wounded feelings and moral shock, he failed to prove them during the trial. Indeed, respondent should have taken the witness stand and should have testified on the mental anguish, serious anxiety, wounded feelings and other emotional and mental suffering he purportedly suffered to sustain his claim for moral damages. Mere allegations do not suffice; they must be substantiated by clear and convincing proof. No other person could have proven such damages except the respondent himself as they were extremely personal to him.

Apparently, in the present case there was no showing that plaintiffs-appellees suffered physical suffering, mental anguish, fright, anxiety, wounded feelings and similar injury that would justify the award of attorney's fees. In fact, the award of moral and exemplary damages were not among the prayers of plaintiffs-appellees in their complaint for nullification of the sheriff's certificate of sale and TCT's. Thus, for failure to allege and show proof to its entitlement, plaintiffs-appellees cannot claim moral damages.

Similarly, for failing to sufficiently establish their entitlement to moral damages, the award of exemplary damages likewise becomes nil. Article 2234 of the Civil Code is explicit in stating that:

ART. 2234. While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. x x x x

Finally, on the award of attorney's fees, none of the circumstances enumerated in Article 2208^[29] of the Civil Code applies in the case at bar. The rationale of the trial court that plaintiffs-appellees are forced to litigate to protect their real rights does not justify the award of attorney's fees. Entitlement to attorney's fees is an exception and there must be some compelling legal reason to bring the case within the exception and justify the award.^[30] A mere adverse decision does not ipso facto justify an award of attorney's fees in favor of the winning party.

WHEREFORE, the appeal is PARTLY GRANTED. The December 18, 2009 Joint Decision of the Regional Trial Court of Santiago City, Branch 35, in the consolidated Special Civil Action (SCA) Case No. 35-0210 and Civil Case No. 35-3233 is hereby AFFIRMED with MODIFICATION as to the awards of moral and exemplary damages and attorney's fees which are hereby DELETED, for want of factual and legal basis.

SO ORDERED.

Carandang, (Chairman), and Gonzales-Sison, JJ., concur.

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- [1] Rollo, pp. 46-58.
- [2] Records, folder no. 3, pp. 131-132..
- [3] Ibid, pp. 151-152.
- [4] Ibid, pp. 158-160.
- [5] Ibid, pp. 133-134.
- [6] Ibid, pp. 155-156.
- [7] Ibid, pp. 153-154.
- [8] Ibid, pp. 135-136.
- [9] Ibid, pp. 157.
- [10] Ibid, p. 129.
- [11] Ibid, pp. 137-140.
- [12] Ibid, pp. 141-145.
- [13] Ibid, p. 146.
- [14] Ibid, p. 147.
- [15] Ibid, p. 148.
- [16] Ibid, p. 149.
- [17] Ibid, p. 150.
- [18] Records, folder no. 2, pp. 1-5.
- [19] Records, folder 1, pp.1-8.
- [20] Ibid, pp. 78.
- [21] Supra at note no. 1.
- [22] Motion for Reconsideration, records, folder no. 3, pp. 234-240.
- [23] Records, folder no. 245.
- [24] Records, folder no. 3, pp. 131-132.
- [25] Ibid, pp. 151-160.

[26] Ibid, pp. 151-152.

[27] , G.R. No. 134330, March 1, 2001.

[28] G.R. No. 152753, January 13, 2004.

[29] In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

- (1) When exemplary damages are awarded;
- (2) When defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation should be reasonable.

[30] Hanjin Heavy Industries and Construction Co., Ltd. vs. Dynamic Planners and Construction Corp., G.R. Nos. 169408 and 170144, April 30, 2008.

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