

ARMANDO S. OLIZON AND ILUMINADA C. OLIZON, PETITIONERS, VS. COURT OF APPEALS AND PRUDENTIAL BANK, RESPONDENT.

G.R. No. 107075. September 01, 1994

Ponente: REGALADO, J.

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REGALADO, J.:

The factual alpha of the present dispute was sometime in 1967 when the spouses Armando and Iluminada Olizon obtained a loan from respondent Prudential Bank in the amount of P25,000.00 and, as security therefor, they executed in favor of respondent bank a real estate mortgage over a parcel of land consisting of 1,000 square meters located at Barrio Calaanan, Kalookan City and registered in their names under Transfer Certificate of Title No. 24604 of the Registry of Deeds of Kalookan City. Unfortunately, that transaction spawned the succeeding events hereunder chronologically narrated, eventuating in this appeal wherein we are now expected to pen the judicial omega.

It appears from the records that the Olizon spouses failed to pay their aforestated obligation upon its maturity, so private respondent extrajudicially foreclosed the real estate mortgage. At a public auction thereafter held on March 11, 1975, the subject property was sold to respondent bank as the highest bidder, pursuant to which it was issued a certificate of sale as of the same date. On March 12, 1974, the said certificate of sale was duly annotated at the back of petitioner's Transfer Certificate of Title No. 24604.

On June 5, 1978, again due to the failure of petitioner spouses to redeem the foreclosed property within the period of redemption, title to the property was consolidated in favor of respondent bank.[1]

On January 14, 1986, respondent bank filed with the Regional Trial Court of Kalookan City a petition to reconstitute Transfer Certificate of Title No. 24604, which was lost in the Office of the Registry of Deeds of Kalookan City, the said proceeding being docketed as Case No. C-2746.[2]

On June 11, 1986, the Regional Trial Court of Kalookan City ordered the reconstitution prayed for. As a consequence, Transfer of Certificate of Title No. 24604 in the name of the Olizon spouses was cancelled and, in lieu thereof, Transfer Certificate of Title No. 149858 was issued on June 5, 1987 in the name of respondent bank.[3]

On November 27, 1989, respondent bank this time filed with the Regional Trial Court of Kalookan City, a petition for the issuance of a writ of possession against petitioner spouses, docketed as LRC Case No. C-3094,[4] and which petition was granted by the trial court on February 8, 1990.[5]

On March 8, 1990, a petition, by way of opposition, was filed by petitioner spouses wherein they sought the cancellation of the writ of possession, the nullification of the certificate of sale dated March 11, 1974, and/or the nullification of the foreclosure proceedings. In support thereof, they alleged lack of notice of the auction sale and lack of posting of the notice of sale as required by Section 3 of Act No. 3135, as amended.[6]

After trial, the court a quo issued an order dated July 16, 1990, with the following dispositive portion:

“WHEREFORE, the Court hereby declares that:

1. The foreclosure of the real estate mortgage executed by the spouses Olizons, as well as the certificate of sale dated March 11, 1974 as (sic) null and void;
2. The writ of possession is hereby set aside; and
3. Ordering the Register of Deeds of Caloocan City to cancel Transfer Certificate of Title No. 149858 issued in the name of Prudential Bank and to reinstate Transfer Certificate of Title No. 24604 to (sic) spouses Armando S. Olizon and Iluminada C. Olizon.

SO ORDERED.”[7]

Private respondent appealed the said decision to the Court of Appeals which rendered its questioned decision in CA-G.R. CV No. 29482, dated September 9, 1992, with a disposition of reversal, thus:

“WHEREFORE, the Decision (sic) dated July 16, 1990 of the Regional Trial Court of Caloocan in LRC Case No. 3094 is hereby REVERSED and SET ASIDE and another rendered upholding the validity of the foreclosure sale of the real estate mortgage and the writ of possession dated February 8, 1990.”[8]

Petitioners have now come to us through the present petition wherein they contend that:

1. The Court of Appeals erred in reversing the trial court since there is evidence to show that the requirements of Sec. 3, Act No. 3135, as amended, were not complied with.
2. The Court of Appeals erred in holding that petitioners had notice of the foreclosure sale.
3. The Court of Appeals erred in holding that petitioners had totally abandoned the subject property, as this is not supported by the evidence.[9]

We do not find substantial merit in the petition.

Herein petitioners are now seeking the annulment of the extrajudicial foreclosure sale conducted more than 20 years ago, invoking therefor two grounds, namely, lack of personal notice to the mortgagors about the foreclosure sale, and the failure of the mortgagee bank to comply with the posting requirement under Section 3 of Act No. 3135, as amended.

It is now a well-settled rule that personal notice to the mortgagor in extrajudicial foreclosure proceedings is not necessary.[10] Section 3 of Act No. 3135 governing extrajudicial foreclosure of real estate mortgages, as amended by Act No. 4118, requires only the posting of the notice of sale in three public places and the publication of that notice in a newspaper of general circulation. Hence, the lack of personal notice to the mortgagors, herein petitioners, is not a ground to set aside the foreclosure sale.

Neither can the supposed failure of respondent bank to comply with the posting requirement as provided under the aforesaid Section 3, under the factual ambiance and circumstances which obtained in this case, be considered a sufficient ground for annulling the aforementioned sale. We are not unaware of the rulings in some cases that, under normal situations, the statutory provisions governing publication of notice of extrajudicial foreclosure sales must be strictly complied with and that failure to publish the notice of auction sale as required by the statute constitutes a jurisdictional defect which invalidates the sale. However, the unusual nature of the attendant facts and the peculiarity of the confluent circumstances involved in this case require that we rule otherwise.

Petitioners cited authority on the requisite publication of notices is not so all-embracing as to deny justified exceptions thereto under appropriate situations. Petitioners quote this passage from *Tambunting et al. vs. Court of Appeals, et al.*[11] which is not conclusive hereon for not being exactly in point, based as it is on different facts,

thus:

“The rule is that statutory provisions governing publication of notice of mortgage foreclosure sales must be strictly complied with, and that even slight deviations therefrom will invalidate the notice and render the sale at least voidable. Interpreting Sec. 457 of the Code of Civil Procedure (reproduced in Sec. 18[c] of Rule 39, Rules of Court and in Sec. 3 of Act No. 3135) in *Campomanes vs. Bartolome and German & Co.* (38 Phil. 8081), this Court held that if a sheriff sells without the notice prescribed by the Code of Civil Procedure induced thereto by the judgment creditor, the sale is absolutely void and no title passes. x x x.” (Emphasis supplied.)

At any rate, respondent Court of Appeals has this commendable ratiocination on the aforestated twin errors assigned by petitioners:

“The decisive issue which must be resolved is whether or not the statutory requirements of notice have been complied with in this case. Section 12 of the mortgage contract reads:

‘12. All correspondence relative to this mortgage, including demand letters, summonses, subpoenas or notifications of any judicial or extrajudicial action shall be sent to the Mortgagor at No. 82 Naval Street, Malabon, Rizal or at the address that may hereafter be given in writing by the Mortgagor to the Mortgagee. The mere act of sending any correspondence by mail or by personal delivery to the said address shall be valid and effective notice to the Mortgagor for all legal purposes, and x x x shall not excuse or relieve the mortgagor from the effects of such notice.’ (Italics supplied.)

“The foregoing stipulation is the law between petitioner and oppositors-spouses and should be complied with faithfully.

“That the mortgagors were actually notified by appellant bank of the foreclosure proceedings is shown by its letters to the Olizons before the actual sale at public auction of the subject property, to wit: (1) Letter dated January 16, 1973 of Atty. Octavio D. Fule, Legal Officer of appellant bank to the Olizons informing the latter that their failure to pay their obligations will constrain appellant bank to institute appropriate legal action against them; (2) Letter dated January 31, 1974 of Atty. Octavio D. Fule, Legal Officer of appellant bank, informing the Olizons that Prudential Bank has filed foreclosure proceedings under Act 3135, as amended.

x x x

“Furthermore, notice of sale was duly published in accordance with law and furnished the Olizons. The evidence presented during the trial of the case show that the then Clerk of Court, Emma Ona, sent a printed letter dated February 18, 1974 informing the Olizons that appellant bank had filed an application to foreclose their real estate mortgage and the public auction of the mortgaged parcel of land was sent on March 11, 1974, together with a copy of the Notice of Sale. The document is more than ten (10) years old and the absence of a registry receipt in the case folder of the foreclosure records of the Sheriff of the City of Caloocan, does not indicate that the Olizons did not receive a copy of the aforesaid notice of sale, it being presumed that the sheriff performed her duties and that foreclosure proceedings are regular. x x x.” (Citations omitted.)[12]

Furthermore, unlike the situation in previous cases[13] where the foreclosure sales were annulled by reason of failure to comply with the notice requirement under Section 3 of Act No. 3135, as amended, what is allegedly lacking here is the posting of the notice in three public places, and not the publication thereof in a newspaper of general circulation.

We take judicial notice of the fact that newspaper publications have more far-reaching effects than posting on bulletin boards in public places. There is a greater probability that an announcement or notice published in a newspaper of general circulation, which is distributed nationwide, shall have a readership of more people than that

posted in a public bulletin board, no matter how strategic its location may be, which caters only to a limited few. Hence, the publication of the notice of sale in the newspaper of general circulation alone is more than sufficient compliance with the notice-posting requirement of the law. By such publication, a reasonably wide publicity had been effected such that those interested might attend the public sale, and the purpose of the law had been thereby subserved.

The object of a notice of sale is to inform the public of the nature and condition of the property to be sold, and of the time, place and terms of the sale. Notices are given for the purpose of securing bidders and to prevent a sacrifice of the property. If these objects are attained, immaterial errors and mistakes will not affect the sufficiency of the notice; but if mistakes or omissions occur in the notices of sale, which are calculated to deter or mislead bidders, to depreciate the value of the property, or to prevent it from bringing a fair price, such mistakes or omissions will be fatal to the validity of the notice, and also to the sale made pursuant thereto.[14]

In the instant case, the aforesaid objective was attained since there was sufficient publicity of the sale through the newspaper publication. There is completely no showing that the property was sold for a price far below its value as to insinuate any bad faith, nor was there any showing or even an intimation of collusion between the sheriff who conducted the sale and respondent bank. This being so, the alleged non-compliance with the posting requirement, even if true, will not justify the setting aside of the sale.

Moreover, herein petitioners failed to discharge the burden of proving by convincing evidence their allegation that there was actually no compliance with the posting requirement. The foreclosure proceeding has in its favor the presumption of regularity,[15] and the burden of evidence to rebut the same is on petitioners. Where the allegation is an essential part of the cause of action or defense in a civil case, whether posited in an affirmative or negative form, the burden of evidence thereon lies with the pleader.[16] Besides, the fact alone that there was no certificate of posting attached to the sheriff's records of the extrajudicial foreclosure sale is not sufficient to prove the lack of posting, especially in this case where the questioned act and the record thereof are already 16 years old. It is quite unfair to now shift to respondent bank the burden of proving the fact of posting considering the length of time that has elapsed, aside from the fact that the sheriff who conducted the public sale and who was responsible for the posting of the notice of sale is already out of the country, with the records being silent on his present whereabouts or the possibility of his returning here.

Indeed, even on equitable considerations alone, the presumption of regularity in the performance of official duty must stand. As aptly found by the Court of Appeals:

“x x x. It is not a matter of lack of compliance with the requirements of the law, rather, it is a matter of unavailability of certain documents due to the loss thereof, considering that more than sixteen (16) years had lapsed from the date of the extra-judicial foreclosure of the real estate mortgage. Indeed, the presumption of regularity in the performance of official duty by the sheriff, more particularly, compliance with the provisions of Act 3135, as amended, has not been overturned by the Olizons.”[17]

Nor are these all that we wish to expound hereon, for this is one case where we find the necessity for the application of the equitable principle of estoppel by laches in order to avoid an injustice.

Laches has been defined as the failure or neglect, for an unreasonable and unexplained length of time, to do that which by exercising due diligence could nor should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.[18]

In the case at bar, petitioners are already considered estopped through laches from questioning the regularity of the sale as well as the ownership of the land in question. It is evident from the records that the petition to annul the

foreclosure sale was filed by herein petitioners only after 16 long years from the date of sale and only after a transfer certificate of title over the subject property had long been issued to respondent bank. Herein petitioners failed to advance any justification for their prolonged inaction. It would be inequitable to allow petitioners, after the lapse of an almost interminable period of time, to defeat an otherwise indefeasible title by the simple and dubious expedient of invoking a purported irregularity in the foreclosure proceedings.

Although a sale under a power contained in a mortgage or trust deed has been defectively executed and the mortgagor has the right to disaffirm the same, he may, by laches or by acts amounting to an estoppel or ratification, cure the defect and render the sale valid.[19] Where a sale under a power is voidable at the election of the mortgagor for some irregularity -- such as that the mortgagee purchased without authority, or that there was an inadequacy in the price obtained, a want of sufficient or proper notice, or the like -- the mortgagor must institute proceedings for avoidance within apt and reasonable time, or his laches will bar him of relief.[20] Thus, a party seeking to set aside a foreclosure sale made under a power of sale must bring his action without unreasonable delay. The court generally will refuse to grant relief when there has been great and unreasonable delay, amounting to laches, in seeking its aid.[21]

Besides, it has been said that in seeking to set aside a foreclosure sale, the moving party must act promptly after he becomes aware of the facts on which he bases his complaint, and in this connection, notice of an irregularity may be presumed from the fact that the mortgagor has knowledge of the sale, as he is thereby put on inquiry, and is bound to use diligence in discovering any defects in the proceedings.[22] Having failed to do so, petitioners cannot now be heard on their much belated complaints.

Moreover, it is an entrenched doctrine in our jurisdiction that registration in a public registry is notice to the whole world. The record is a constructive notice of its contents as well as of all interests, legal and equitable, included therein. All persons are charged with knowledge of what it contains.[23] Therefore, in the case at bar, the annotation of the certificate of sale on petitioners' Transfer Certificate of Title No. 24604 and the filing of the affidavit of consolidation with the Register of Deeds constituted constructive notice of both acts to herein petitioners. Consequently, as early as March 11, 1974[24] when the certificate of sale was annotated at the back of their title, petitioners were already charged with knowledge of the foreclosure sale, yet they still failed or refused to take the necessary steps to protect their rights over the subject property.

It also bears stressing that petitioners entered their appearance in the Regional Trial Court of Kalookan City where the petition for reconstitution of Transfer Certificate of Title No. 24604 was filed by respondent bank, as shown by said court's order dated June 11, 1986.[25] It was then incumbent on petitioners to have filed an objection or opposition to the reconstitution if they sincerely believed that the property rightfully belongs to them. Significantly, petitioners neither moved for the reconsideration of nor appealed from the order of the lower court granting reconstitution of title in the name of respondent bank.

Finally, the negligence or omission to assert a right within a reasonable time warrants not only a presumption that the party entitled to assert it either had abandoned it or declined to assert it, but also casts doubt on the validity of the claim of ownership. Such neglect to assert a right taken in conjunction with the lapse of time, more or less great, and other circumstances causing prejudice to the adverse party, operates as a bar in a court of equity.[26] In the present case, at no time after the debt became due and demandable and the mortgage property had been foreclosed, or even thereafter, did petitioners offer to pay their mortgage obligation to redeem their property. Petitioners' collective acts are, therefore, indicative of their acquiescence to and acknowledgment of the validity of the foreclosure proceedings and the sale, as well as a recognition of respondent bank's just and legal title over the property acquired thereby.

We, therefore, cannot but concur in these observations of respondent Court:

“The evidence on record, likewise show that after the foreclosure proceedings in 1974, the Olizons had totally abandoned actual ownership over the subject property in favor of appellant bank, leaving it to appellant bank to pay the real estate taxes over the subject property. In fact, in the reconstitution of the owner’s title in Case No. C-2746, while the Olizons entered their appearance before the Regional Trial Court of Caloocan, they did not oppose the petition of appellant bank, despite the fact that the certificate of sale and final deed of sale as well as consolidation of the ownership were submitted as evidence by appellant bank in the reconstitution process. It was only after they noticed the lack of certain documents in the possession of the sheriff that they thought of raising technicalities. x x x.”[27]

WHEREFORE, the instant petition is DENIED for lack of merit and the assailed judgment of respondent Court of Appeals is hereby AFFIRMED in toto.

SO ORDERED.

Narvasa, C.J., (Chairman), Puno, and Mendoza, JJ., concur.

Padilla, J., in the result.

* The word “Spouses” (or the abbreviation “Sps.”), stated before the names of petitioners in the title of this case during the proceedings in the two lower courts, has been eliminated from the caption here as it is neither indicative of an official position nor an accepted honorific.

[1] Decision, CA-G.R. CV No. 29482, 1-2; Rollo, 21-22.

[2] See Exhibit N-1, Folder of Exhibits, LRC Case No. C-3094, Regional Trial Court, Branch 120, Kalookan City.

[3] Original Record, 7.

[4] Ibid., 1-4.

[5] Ibid., 23.

[6] Ibid., 43-45.

[7] Ibid., 80-82; per Judge Arturo A. Romero.

[8] Rollo, 26. Justice Jorge S. Imperial, ponente, with Justices Serafin E. Camilon and Cancio C. Garcia, concurring.

[9] Ibid., 11.

[10] Cortes, et al. vs. Intermediate Appellate Court, et al., G.R. No. 73678, July 21, 1989, 175 SCRA 545; Cruz, et al. vs. Court of Appeals, et al., G.R. No. 90369, October 31, 1990, 191 SCRA 170; Gravina, et al. vs. Court of Appeals, et al., G.R. No. 97070, March 19, 1993, 220 SCRA 178.

[11] L-48278, November 8, 1988, 167 SCRA 16; Rollo, 96.

[12] Rollo, 24-25.

[13] Tambunting, et al. vs. Court of Appeals, et al., supra; Masantol Rural Bank, Inc. vs. Court of Appeals, et al., G.R. Nos. 97132 and 70937, December 10, 1991, 204 SCRA 752.

[14] Bacon vs. Northwestern Mut. L. Ins. Co., 131 U.S. 258, 33 L. Ed 128, 9 S Ct 787; State ex rel. Raulerson vs.

Sloan, 134 Fla 632, 14 So 128.

[15] Philippine National Bank vs. Adul, etc., et al., G.R. No. 52823, November 2, 1982, 118 SCRA 110.

[16] See Industrial Finance Corporation vs. Tobias, L-41555, July 27, 1977, 78 SCRA 28.

[17] Rollo, 26.

[18] Tejido, et al. vs. Zamacoma, et al., G.R. No. 63048, August 7, 1985, 138 SCRA 78, citing Tijam, et al. vs. Sibonghanoy, et al., No. L-21450, April 15, 1963, 23 SCRA 29; Sotto vs. Teves, et al., L-38018, October 31, 1978, 86 SCRA 154.

[19] 55 Am. Jur. 2d, Ratification and Estoppel, 750.

[20] 55 Am. Jur. 2d, Laches, 751.

[21] 59 C.J.S., Mortgages, 1059.

[22] 59 C.J.S., Mortgages, 1060.

[23] People vs. Reyes, G.R. Nos. 74226-27, July 27, 1989, 175 SCRA 597.

[24] Exhibit A, Folder of Exhibits, LRC Case No. C-3094, Regional Trial Court, Branch 120, Kalookan City.

[25] Exhibit N-1, *ibid.*, *id.*

[26] Guerrero, et al. vs. Court of Appeals, et al., L-35250, November 29, 1983, 126 SCRA 109; Villamor, et al. vs. Court of Appeals, et al., L-41508, June 27, 1988, 162 SCRA 574.

[27] Rollo, 26.

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