

GODFREY BOHANAN, PETITIONER, VS. COURT OF APPEALS, L & R CORPORATION AND SPOUSES ROSARIO & DIONISIO CABRERA, JR., RESPONDENTS.

G.R. No. 111654. April 18, 1996

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

Petitioner questions the Decision of the Court of Appeals[1] which reversed the Regional Trial Court of Manila[2] declaring the foreclosure sale dated 14 September 1984 null and void. He also assails the Resolution denying his motion for reconsideration.[3]

On 7 September 1983 petitioner Godfrey Bohanan obtained a loan of P200,000.00 from private respondent L & R Corporation (hereinafter referred to as L & R) payable in sixty (60) equal monthly installments. To secure payment petitioner executed a deed mortgaging his two lots with the four-unit apartment building thereon situated in Sta. Ana, Manila, and covered by Transfer Certificates of Title Nos. 92334 and 92335 of the Registry of Deeds of Manila. The deed further provided that in case petitioner failed to pay any monthly amortization the overdue amortization or amortizations would draw monthly interest at 1-3/4% without prejudice to the right of L & R to declare the whole indebtedness or the entire unpaid balance, as the case may be, due and demandable. In addition, petitioner would have to pay collection charges including attorney's fees and other incidental expenses equivalent to 2% of the total outstanding obligation in case the matter was placed in the hands of a lawyer for collection.

Petitioner was remiss in his fourth amortization. Consequently, the remaining unpaid obligation (then supposedly amounting to P194,169.15) became due and demandable and petitioner was given a grace period of ten (10) days within which to pay but the latter failed. Thus L & R sent a notice of foreclosure and filed a petition in the Manila Sheriff's Office to commence extrajudicial foreclosure proceedings against him. Accordingly, a notice of extrajudicial foreclosure sale under Act 3135,[4] as amended, was made and copies thereof sent to L & R and petitioner Godfrey Bohanan by the Deputy Sheriff acting for the Sheriff of Manila. The notice was published in the 20 and 27 August and 3 September 1984 issues of The Metropolitan Mail per affidavit of its editor-publisher.

At the scheduled sale on 14 September 1984 L & R became the successful bidder with its bid of P327,615.54 and was issued a certificate of sale. However, upon failure of petitioner to redeem his property within the one-year redemption period provided by law, L & R executed an Affidavit of Consolidation of Ownership leading to the issuance on 1 October 1985 of TCT Nos. 167051 and 167052 in its name and the cancellation of petitioner's TCT Nos. 92334 and 92335. On 17 February 1987 L & R's titles were in turn cancelled to give way to TCT Nos. 172718 and 172719 in the name of Rosario Guezon, married to Dionisio Cabrera Jr., who bought the property from L & R for P200,000.00.

On 23 February 1987 petitioner filed a complaint against L & R Corporation and its vendees, the spouses Cabrera Jr., for recovery of property with preliminary injunction[5] contending that the sale between the Cabreras on one hand and L & R on the other, was undertaken in fraud of a contractual commitment to him. Subsequently the

complaint was amended to be one for annulment of sale with injunction and damages, with petitioner asking that the sheriff's foreclosure sale held on 14 September 1984 be declared void and that the foreclosed properties be returned to him upon his payment of the mortgage obligation.

The trial court rendered judgment in favor of petitioner declaring null and void the Sheriff's foreclosure sale without prejudice to the foreclosure of the mortgage on said properties strictly in accordance with law; annulling the Deed of Sale of 13 February 1987 executed by private respondent L & R in favor of Rosario Guanzon as well as the TCTs issued pursuant thereto; and, ordering payment of damages in favor of petitioner.

On 19 April 1993 the Court of Appeals reversed the trial court.[6] The appellate court concluded that there was no irregularity in the conduct of the foreclosure sale and that the spouses Cabrera could not be considered buyers in bad faith since their act of buying the properties direct from L & R, instead of through petitioner, did not automatically make them so. Hence, this recourse by Godfrey Bohanan.

Petitioner contends that respondent Court of Appeals erred in concluding that there was a valid foreclosure sale despite the fact that (a) he was not notified of the sale; (b) the deputy sheriff who conducted the sale did not submit a certificate of posting to prove the alleged posting in three (3) public places required under Act No. 3135; and, (c) the Post Office and Finance buildings where the notice of sale was allegedly posted (in addition to the City Hall) were not public places.

The petition must be denied. We agree with respondent Court of Appeals that the records show no irregularity in the foreclosure sale held on 14 September 1984. First, personal notice on the mortgagor is not required under Act No. 3135 as amended.[7] All that is required is that notice be given by posting notices of the sale for not less than twenty (20) days in at least three (3) public places of the municipality or city where the property is situated, and publication once a week for at least three (3) consecutive weeks in a newspaper of general circulation in the municipality or city, if the property is worth more than four hundred pesos.[8] Therefore, any discussion into the factual issue of whether petitioner received a notice of foreclosure sale would be an exercise in futility since it would not have any bearing at all on the alleged validity or invalidity of the foreclosure sale in question. Second, a certificate of posting is not required, much less considered indispensable, for the validity of a foreclosure sale either under Act 3135 or under the ruling in *Tambunting v. Court of Appeals*[9] cited by petitioner.

Petitioner argues that the principal defect which invalidates the questioned foreclosure sale is the non-presentation of a certificate of posting by the deputy sheriff despite the statement in *Tambunting* that "the published notices and certificate of posting by the Sheriff xxx should have been presented"[10] to show compliance. Petitioner then goes on to insist that since the certificate of posting is an indispensable proof of compliance with the law, the mere testimony of Deputy Sheriff Oscar Domingo (presented as petitioner's own witness) that he posted the notice of sale in three (3) public places does not suffice. Hence, reliance by respondent Court of Appeals on the presumption of regularity in the performance of official duty to conclude that the legal requirements for a valid foreclosure has been complied with is misplaced.

We find the argument to be without merit. The non-presentation of a certificate of posting does not affect the intrinsic validity of the questioned foreclosure sale. As already stated, all that is required by Sec. 3 of Act No. 3135 is that public notice of the place and time of the sale be posted in three (3) public places and, where the property is worth more than P400.00, published in a newspaper of general circulation. Non-compliance constitutes a jurisdictional defect sufficient to invalidate the sale.

However, a certificate of posting is not a statutory requirement. Rather, it is significant only in the matter of proving compliance with the required posting of notice. And although we said in *Tambunting* that "[t]he presumption of compliance with official duty has been rebutted by the failure to present proof of posting and

publication of the notice of sale," this cannot be construed to mean that a certificate of posting is indispensable without which a questioned foreclosure sale is automatically doomed as invalid. For 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.[11] In *Tambunting* the absence of the affidavit of publication was considered fatal because no equally convincing and competent proof of compliance was offered to compensate for its non-presentation.

In the case at bench, however, although Deputy Sheriff Oscar Domingo failed to present a certificate of posting because some records were lost when the sheriff's office was transferred to the fifth floor of the City Hall building, he did declare under oath (when presented as petitioner's own witness) that he posted notices of the questioned sale on the bulletin boards of the City Hall, the Post Office and Finance Buildings. We agree with respondent Court of Appeals that such testimony suffices in lieu of the customary certificate of posting and can properly be accorded the presumption of regularity of performance having come from a public officer to whom no improper motive to testify has been attributed.

As to the contention that the Post Office and Finance Buildings were not public places, besides merely alleging the same (we do not even know which post office and what finance building petitioner was referring to), petitioner did not question the validity of the foreclosure sale on any ground whatsoever after its termination. On the contrary, his conduct afterwards even seems to indicate that he has no objection whatsoever as to its validity. For petitioner even contends that he negotiated with private respondent L & R Corporation for the return of the property by appealing to the latter's benevolence. When he could not raise the winning bid made by L & R in the foreclosure sale, petitioner agreed to look for a buyer who could afford the amount, with the difference in price to be retained by him. However, upon learning who the legal owner of the property was, respondent spouses chose to negotiate directly with the latter to save them the difference in price. As respondent court concluded, such act did not make the spouses in bad faith, more so when there is no indication that they were privy to the agreement between petitioner and L & R Corporation, even assuming there was any.

WHEREFORE, the questioned Decision and Resolution of respondent Court of Appeals are **AFFIRMED** in toto. Costs against petitioner.

SO ORDERED.

Padilla (Chairman), Vitug, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Penned by then Associate Justice Reynato S. Puno (now a member of this Court) with Justices Justo P. Torres Jr. and Pacita Cañizares-Nye concurring, *Rollo*, pp. 26-35.

[2] Penned by Judge David O. Nitafan, *RTC-Br. 52, Manila, Id.*, pp. 40-54.

[3] Penned by Justice Justo P. Torres Jr. with Justices Jesus M. Elbinias and Pacita Cañizares-Nye concurring, *Id.*, p. 36.

[4] *An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgages.*

[5] Docketed as Civil Case No. 87-39561.

[6] Docketed as CA-G.R. CV No. 27533 entitled *Godfrey Bohanan v. L & R Corporation, et al.*

[7] *Cruz v. Court of Appeals*, G.R. No. 90369, 31 October 1990, 191 SCRA 170, 174; *Cortes v. Intermediate Appellate Court*, G.R. No. 73678, 21 July 1989, 175 SCRA 545, 548; *GSIS v. Court of Appeals*, No. L-40824, 23 February 1989, 170 SCRA 533, 539.

[8] Sec. 3, Act No. 3135.

[9] No. L-48278, 8 November 1988, 167 SCRA 16.

[10] Id., p.24.

[11] Olizon v. Court of Appeals, G. R. No. 107075, 1 September 1994, 236 SCRA 148, 157.

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