

## **FORTUNE MOTORS (PHILS.) INC., PETITIONER, VS. METROPOLITAN BANK AND TRUST COMPANY, AND THE COURT OF APPEALS, RESPONDENTS.**

*G.R. No. 115068. November 28, 1996*

Ponente: HERMOSISIMA, JR., J.

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### **HERMOSISIMA, JR., J.:**

Before us is a petition for review of the decision of the Court of Appeals in CA-G.R. CV No. 38340 entitled "Fortune Motors (Phils.) Inc., v. Metropolitan Bank and Trust Company et al." [1] The appellate court's decision reversed the decision in Civil Case No. 89-5637 of Branch 150 of the Regional trial Court of Makati City.

It appears that Fortune Motors (Phils.) Inc. obtained the following loans from the Metropolitan Bank and Trust company: (1) P20 Million, on March 31, 1982; (2) P8 Million, on April 30, 1983; (3) P2,500,000.00, on June 8, 1983 and; (4) P3 Million, on August 16, 1983.

On January 6, 1984, respondent bank consolidated the loans of P8 Million and P3 Million into one promissory note, which amounted to P12,650,000.00. This included the interest that had accrued thereon in the amount of P1,650,000.00.

To secure the obligation in the total amount of P34,150,000.00, petitioner mortgaged certain real estate in favor of respondent bank.

Due to financial constraints, petitioner failed to pay the loan upon maturity. Consequently on May 25, 1984, respondent bank initiated extrajudicial foreclosure proceedings and in effect, foreclosed the real estate mortgage.

The extrajudicial foreclosure was actually conducted by Senior Deputy Sheriff Pablo Y. Sy who had sent copies of the Notice of Extrajudicial Sale to the opposing parties by registered mail. In accordance with law, he posted copies of the Notice of Sheriff's Sale at three conspicuous public places in Makati -- the office of the Sheriff, the Assessor's office and the Register of Deeds in Makati. He thereafter executed the Certificates of Posting on May 20, 1984. The said notice was in fact published on June 2, 9 and 16, 1984 in three issues of "The New Record." An affidavit of publication, dated June 19, 1984, [2] was executed by Teddy F. Borres, publisher of the said newspaper.

Subsequently, the mortgaged property was sold at public auction for P47,899,264.91 to the mortgagee bank, the highest bidder.

Petitioner failed to redeem the mortgaged property within the one-year redemption period and so, the titles thereto were consolidated in the name of respondent bank by which token the latter was entitled to the possession of the property mortgaged and, in fact possessed the same.

Petitioner then filed a complaint for the annulment of the extrajudicial foreclosure, which covered TCT Nos. 461087, 432685, 457590, 432684, S-54185, S-54186, S-54187, and S-54188.

On December 27, 1991, the trial court rendered judgment annulling the extrajudicial foreclosure of the mortgage.

On May 14, 1992, an appeal was interposed by the respondent to the Court of Appeals. Acting thereon, the Court of Appeals reversed the decision rendered by the lower court. Subsequently, the motion for Reconsideration filed by petitioner was denied on April 26, 1994.

Aggrieved by the decision rendered by the Court of appeals, petitioner appealed before this Court. On May 30, 1994, however, we issued a Resolution denying said petition. Hence, this motion for reconsideration.

Petitioner raises the following issues before us, to wit:

"I

THAT THE COURT OF APPEALS ERRED IN DECLARING THAT THE PUBLICATION OF THE NOTICE OF EXTRAJUDICIAL FORECLOSURE WAS VALID.[3]

II

THAT THE RESPONDENT COURT OF APPEALS ERRED IN DECLARING THAT THE NOTICES OF EXTRAJUDICIAL FORECLOSURE, AND SALE WERE DULY RECEIVED BY THE PETITIONER.[4]

III

THAT THE COURT OF APPEALS ERRED IN FAILING TO ADJUDGE THE IRREGULARITIES IN THE BIDDING, POSTING, PUBLICATION, AND THE SALE OF FORTUNE BUILDING.[5]

IV

THAT THE RESPONDENT COURT OF APPEALS ERRED IN RENDERING A JUDGMENT BASED ON PRESUMPTION."[6]

Petitioner contends that the newspaper "Daily Record"[7] where the notice of extrajudicial foreclosure was published does not qualify as a newspaper of general circulation.

It further contends that the population that can be reached by the "Daily Record" is only .004% as its circulation in Makati in 1984, was 1000 to 1500 per week. Hence, it concludes that only 1648 out of a population of 412,069 were probable readers of the "Daily Record," and that this is not the standard contemplated by law when it refers to a newspaper of general circulation.

In the case of *Bonnevie v. Court of Appeals*,[8] we had already made a ruling on this point:

"The argument that the publication of the notice in the 'Luzon Weekly Courier' was not in accordance with law as said newspaper is not of general circulation must likewise be disregarded. The affidavit of publication, executed by the publisher, business/advertising manager of the Luzon Weekly Courier, states that it is 'a newspaper of general circulation in x x x Rizal; and that the notice of Sheriff's sale was published in said paper on June 30, July 7 and July 14, 1968.' This constitutes prima facie evidence of compliance with the requisite publication. (*Sadang v. GSIS*, 18 SCRA 491).

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; that it is published at regular intervals.' (*Basa v. Mercado*, 61 Phil. 632). The newspaper need not have the largest circulation so long as it is of general circulation. (*Banta v. Pacheco*, 74 Phil. 67)."

In the case at bench, there was sufficient compliance with the requirements of the law regarding publication of the notice in a newspaper of general circulation. This is evidenced by the affidavit of publication executed by the *New Record's* publisher, Teddy F. Borres, which stated that it is a newspaper edited in Manila and Quezon City and of general circulation in the cities of Manila, Quezon City et al., and in the Provinces of Rizal xxx, published every Saturday by the *Daily Record, Inc.* This was affirmed by Pedro Deyto, who was the executive editor of the

said newspaper and who was a witness for petitioner. Deyto testified: a) that the New Record contains news; b) that it has subscribers from Metro Manila and from all over the Philippines; c) that it is published once a week or four times a month ; and d) that he had been connected with the said paper since 1958, an indication that the said newspaper had been in existence even before that year.[9]

Another contention posited by petitioner is that the New Record is published and edited in Quezon City and not in Makati where the foreclosed property is situated, and that, when New Record's publisher enumerated the places where said newspaper is being circulated, Makati was not mentioned.

This contention of petitioner is untenable. In 1984, when the publisher's affidavit relied upon by petitioner was executed, Makati, Mandaluyong, San Juan, Parañaque et. al., were still part of the province of Rizal. Apparently, this is the reason why in the New Record's affidavit of publication executed by its publisher, the enumeration of the places where it was being circulated, only the cities of Manila, Quezon, Caloocan, Pasay, Tagaytay, et. al., were named. Furthermore, as aptly ratiocinated by the Court of Appeals:

"The application given by the trial court to the provisions of P.D. No. 1079 is, to our mind, too narrow and restricted and could not have been the intention of the said law. Were the interpretation of the trial court (sic) to be followed, even the leading dailies in the country like the 'Manila Bulletin,' the 'Philippine Daily Inquirer,' or 'The Philippine Star' which all enjoy a wide circulation throughout the country, cannot publish legal notices that would be honored outside the place of their publication. But this is not the interpretation given by the courts. For what is important is that a paper should be in general circulation in the place where the properties to be foreclosed are located in order that publication may serve the purpose for which it was intended." [10]

Petitioner also claims that the New Record is not a daily newspaper because it is published only once a week.

A perusal of Presidential Decree (P.D.) No. 1079 and Act 3135 shows that the said laws do not require that the newspaper which publishes judicial notices should be a daily newspaper. Under P.D. 1079, for a newspaper to qualify, it is enough that it be a "newspaper or periodical which is authorized by law to publish and which is regularly published for at least one (1) year before the date of publication" which requirement was satisfied by New Record. Nor is there a requirement, as stated in the said law, that the newspaper should have the largest circulation in the place of publication.

Petitioner claims that, when its representative went to a newspaper stand to look for a copy of the new Record, he could not find any. This allegation can not be made a basis to conclude that the newspaper "New Record" is not of general circulation. By its own admission, petitioner's representative was looking for a newspaper named "Daily Record." Naturally, he could not find a newspaper by that name as the newspaper's name is "New Record" and not "Daily Record." Although it is the Daily Record Inc. which publishes the New Record, it does not mean that the name of the newspaper is Daily Record.

Petitioner contends that, since it was the Executive Judge who caused the publication of the notice of the sale and not the Sheriff, the extrajudicial foreclosure of the mortgage should be deemed annulled.

Petitioner's contention in this regard is bereft of merit, because Sec. 2 of P.D. No. 1079 clearly provides that:

"The executive judge of the court of first instance shall designate a regular working day and a definite time each week during which the said judicial notices or advertisements shall be distributed personally by him [11] for publication to qualified newspapers or periodicals xxx, which distribution shall be done by raffle."

The said provision of the law is clear as to who should personally distribute the judicial notices or advertisements to qualified newspapers for publication. There was a substantial compliance with the requirements when it was

the Executive Judge of the Regional Trial Court of Makati who caused the publication of the said notice by the newspaper selected by means of raffle.

With regard to the second assigned error wherein petitioner claims that it did not personally receive the notices of extrajudicial foreclosure and sale supposedly sent to it by Metrobank, we find the same unmeritorious.

Settled is the rule that personal notice to the mortgagor in extrajudicial foreclosure proceedings is not necessary. 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. It is pristine clear from the above provision that the lack of personal notice to the mortgagor, herein petitioner, is not a ground to set aside the foreclosure sale.[12]

Petitioner's expostulation that it did not receive the mailed notice to it of the sale of the mortgaged property should be brushed aside. The fact that respondent was able to receive the registry return card from the mail in regular course shows that the postal item presented by the return card had been received by the addressee. Otherwise, as correctly contended by respondent, the mailed item should have been stamped "Returned to Sender," still sealed with all the postal markings, and the return card still attached to it.

As to the contention that the signature appearing on the registry return card receipt appears to be only a dot and that the photostat copy does not contain a signature at all we find, after a close scrutiny of the registry return card, that there are strokes before and after the dot. These strokes appear to be a signature which signifies: a) that the registry claim card was received at the given address; b) that the addressee had authorized a person to present the claim card at the post office and receive the registered mail matter; and c) that the authorized person signed the return card to acknowledge his receipt of the mail matter. Even the trial court in its decision ruled that:

"x x x the Court finds no cogent reason to overcome the presumption that Sheriff Pablo Sy performed his task regularly and in accordance with the rules. A closer look at the assailed xerox copy of the registry receipt and the original form which said xerox was admittedly copied would indeed show that the xerox is not a faithful reproduction of the original since it does not bear the complete signature of the addressee as appearing on the original. It does not, however, follow that the xerox is a forgery. The same bears slight traces of the signature appearing on the original but, there is no indication that the one was altered to conform to the other. Rather, there must have been only a misprint of the xerox but not amounting to any attempt to falsify the same." [13]

Petitioner also claims that it had transferred to a different location but the notice was sent to its old address. Petitioner failed to notify respondent of its supposed change of address. Needless to say, it can be surmised that respondent had sent the notice to petitioner's official address.

Anent its third assigned error, petitioner assails the posting of the notices of sale by the Sheriff in the Office of the Sheriff, Office of the Assessor and the Register of Deeds as these are not the conspicuous public places required by law. Furthermore, it also questions the non-posting of the notice of sale on the property itself which was to be sold.

Apparently, this assigned error of petitioner is tantamount to a last ditch effort to extricate itself from the quagmire it is in. Act 3135 does not require posting of the notice of sale on the mortgaged property. Section 3 of the said law merely requires that the notice of the sale be posted for not less than twenty days in at least three public places of the municipality or city where the property is situated. The aforementioned places, to wit: the Sheriff's Office, the Assessor's Office and the Register of Deeds are certainly the public places contemplated by law, as these are places where people interested in purchasing real estate congregate.

With regard to the fourth assigned error of petitioner, we do not subscribe to the latter's view that the decision of the Court of Appeals was mainly based on the presumption of the regularity of the performance of official

function of the officers involved. A perusal of the records indubitably shows that the requirement of Act No. 3135 on the extrajudicial foreclosure of real estate mortgage had been duly complied with by Senior Deputy Sheriff Sy.

WHEREFORE, the petition is DENIED and the decision rendered in CA-G.R. CV No. 38340 is hereby AFFIRMED.

**SO ORDERED.**

Padilla, (Chairman), Bellosillo, Vitug, and Kapunan, JJ., concur.

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[1] Penned by Justice Salome A. Montoya and concurred in by Justices Pedro A. Ramirez and Eubulo G. Verzola.

[2] Rollo, p. 81.

[3] Rollo, p. 10.

[4] Rollo, p. 13.

[5] Rollo, p. 16.

[6] Rollo, p. 24.

[7] The name of the newspaper where the notice of extrajudicial foreclosure was published is New Record and not Daily Record as contended by petitioner.

**[8] 125 SCRA 122 [1983].**

[9] Rollo, pp. 39-40.

[10] Decision, p. 13; Rollo, p. 41.

[11] Underlining supplied.

[12] Olizon v. Court of Appeals, 236 SCRA 148 [1994]; Philippine National Bank v. International Corporate Bank, 199 SCRA 508 [1991]; Cruz v. Court of Appeals, 191 SCRA 170 [1990]; Cortes v. Intermediate Appellate Court, 175 SCRA 545 [1989].

[13] Rollo, p. 36.

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