

METROPOLITAN BANK AND TRUST COMPANY, PETITIONER, VS. FRANCISCO Y. WONG, RESPONDENT.

G.R. No. 120859. June 26, 2001

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

It is bad enough that the mortgagor has no choice but to yield his property in a foreclosure proceeding. It is infinitely worse, if prior thereto, he was denied of his basic right to be informed of the impending loss of his property. This is another instance when law and morals echo the same sentiment.

This is a petition for review on certiorari seeking the reversal and setting aside of the decision dated June 13, 1994 and resolution dated June 14, 1995 of the Court of Appeals in CA-G.R. CV No. 35615 entitled “Francisco Y. Wong versus Metropolitan Bank and Trust Company.”[1]

The essential antecedents are:

Sometime in 1976, the Mindanao Grains, Inc. (MGI for brevity), through its officers Wenceslao Buenaventura and Faustino Go, applied for a credit accommodation with the Metropolitan Bank and Trust Company (herein petitioner) to finance its rice and corn warehousing business. As a security for such credit accommodation, respondent Francisco Y. Wong, and his wife Betty C. Wong executed in favor of petitioner a real estate mortgage over a parcel of land consisting of 31, 292 square meters located at Campo 7, Molave, Zamboanga del Sur and registered in respondent’s name under Transfer Certificate of Title (TCT) No. 11758.

On April 11, 1980, due to MGI’s failure to pay the obligation secured by the real estate mortgage, petitioner filed an application for extra-judicial foreclosure under Act No. 3135. A notice of foreclosure sale was published in Pagadian Times once, for three consecutive weeks (May 18-25, 1980, May 26-June 2, 1980 and June 2-8, 1980), setting the auction sale of the mortgaged property on June 5, 1980. No notice was posted in the municipality or city where the mortgaged property was situated.

As a consequence, MGI, through its president, Simeon Chang (Chang), requested petitioner to postpone the scheduled auction sale from June 5, 1980 to July 7, 1980. Petitioner granted the request. Thereafter, Chang and petitioner agreed that should MGI pay P20,000.00 on or before the scheduled auction sale, the same would be postponed for a period of 60 days. Chang paid the amount on November 3, 1981. Despite such payment, Sheriff Deo Bontia proceeded with the auction sale on November 23, 1981. Petitioner was adjudged the sole and highest bidder. Thus, a certificate of sale was issued to petitioner. The sale was registered with the Registry of Deeds on the same day. After the expiration of the one (1) year redemption period, ownership over the property was consolidated and TCT No. T-17853 was correspondingly issued in the name of petitioner.

Respondent, unaware of the foregoing developments, applied for a credit accommodation with the Producers Bank of the Philippines, Iloilo City, using as security his TCT No. 11758. It was only then when he learned that his property was already foreclosed by petitioner and no longer in his name.

Feeling aggrieved, respondent filed with the Regional Trial Court, Branch 18, Pagadian City a complaint for reconveyance and damages against petitioner and the Register of Deeds of Zamboanga del Sur. Respondent, in his complaint, assailed the validity of the extra-judicial foreclosure sale basically on the ground that petitioner did not comply with the requirements of Section 3, Act No. 3135 that “notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality and city.”

During the pendency of the case, petitioner sold the disputed property to a certain Betty Ong Yu.

After hearing, the trial court decreed:

“WHEREFORE, IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered sentencing defendant Metropolitan Bank and Trust Company to pay plaintiff the following amounts:

- Ten Million, Five Hundred Thousand (P10,500,000.00) Pesos representing the fair market value of the property as of the promulgation of this decision, with interest of twenty four (24%) percent per annum thereof until fully paid;
- Moral damages of Two million (P2,000,000.00) Pesos;
- Exemplary damages of Ten million (P10,000,000.00) Pesos;
- Attorney’s fee of Two Hundred Thousand (P200,000.00) Pesos, plus Five Hundred (P500.00) Pesos for every hearing or court proceeding actually attended by plaintiff’s counsel; and
- Costs of suit.

No monetary judgment can be rendered against defendant Register of Deeds of Zamboanga del Sur in view of the absence of monetary claim in the complaint.

Defendant bank’s counterclaim is hereby DISMISSED for lack of merit.

SO ORDERED.”[2]

On appeal by petitioner, the Court of Appeals affirmed the RTC decision with modification in the sense that the monetary awards were reduced, thus:

“WHEREFORE, the judgment appealed from is hereby MODIFIED, directing the appellant to pay appellees the following amounts:

- Four Million (P4,000,000.00) Pesos representing the fair market value of the subject property;
- Moral damages of Five Hundred Thousand (P500,000.00) Pesos;
- Exemplary damages of One Million (P1,000,000.00) Pesos;
- Attorney’s fees of Two Hundred Thousand (P200,000.00) Pesos, plus Five Hundred (P500.00) Pesos for every hearing or court proceeding actually attended by plaintiff’s counsel; and
- Costs of suit.

SO ORDERED.”

Twice thwarted, petitioner now comes before us imputing the following errors to the Court of Appeals:

I

THE RESPONDENT COURT OF APPEALS ERRED IN RULING THAT THE FORECLOSURE SALE CONDUCTED ON NOVEMBER 23, 1981 WAS LEGALLY INFIRM FOR NON – COMPLIANCE WITH THE STATUTORY REQUIREMENTS OF POSTING AND PUBLICATION AS PROVIDED FOR IN ACT 3135, AS AMENDED.

II

THE RESPONDENT COURT OF APPEALS ERRED IN AWARDING DAMAGES AND ATTORNEY'S FEES TO RESPONDENT WONG.

Petitioner places excessive reliance on the case of *Olizon v. Court of Appeals*[3] in justifying its claims: (a) that its failure to comply with the posting requirement under Section 3 of Act No. 3135 did not necessarily result in the nullification of the foreclosure sale since it complied with the publication requirement; and (b) that personal notice of the foreclosure proceedings to respondent is not a condition sine qua non for its validity. In assailing the monetary awards to respondent, petitioner claims it was not guilty of bad faith in selling the disputed property to Betty Ong Yu, the sale having been perfected even before respondent filed his action for reconveyance and damages with the trial court.

For its part, respondent argues that “the unusual nature of the attendant facts and the peculiarity of the confluent circumstances” involved in *Olizon* are not present in the instant case.

The petition is bereft of merit.

Succinct and unmistakable is the consistent pronouncement of this Court that it is not a trier of facts. And well-entrenched is the doctrine that pure questions of fact may not be the subject of appeal by certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as this mode of appeal is generally confined to questions of law. Corollarily, non-compliance with the requirements of notice and publication in an extra-judicial foreclosure is a factual issue. The resolution thereof by the lower courts is binding and conclusive upon this Court.[4] Thus, disregarding all factual issues which petitioner interjected in his petition, the only crucial legal queries in this case are: first, is personal notice to respondent a condition sine qua non to the validity of the foreclosure proceedings? and, second, is petitioner's non-compliance with the posting requirement under Section 3, Act No. 3135 fatal to the validity of the foreclosure proceedings?

In resolving the first query, we resort to the fundamental principle that a contract is the law between the parties and, that absent any showing that its provisions are wholly or in part contrary to law, morals, good customs, public order, or public policy, it shall be enforced to the letter by the courts. Section 3, Act No. 3135 reads:

“Se. 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality and city.”

The Act only requires (1) the posting of notices of sale in three public places, and (2) the publication of the same in a newspaper of general circulation. Personal notice to the mortgagor is not necessary. Nevertheless, the parties to the mortgage contract are not precluded from exacting additional requirements.[5] In this case, petitioner and respondent in entering into a contract of real estate mortgage, agreed *inter alia*:

“all correspondence relative to this mortgage, including demand letters, summonses, subpoenas, or notifications of any judicial or extra-judicial action shall be sent to the MORTGAGOR at 40-42 Aldeguer St. Iloilo City, or at the address that may hereafter be given in writing by the MORTGAGOR to the MORTGAGEE.”

Precisely, the purpose of the foregoing stipulation is to apprise respondent of any action which petitioner might take on the subject property, thus according him the opportunity to safeguard his rights. When petitioner failed to send the notice of foreclosure sale to respondent, he committed a contractual breach sufficient to render the foreclosure sale on November 23, 1981 null and void.

The second query must be answered in the affirmative. An incisive scrutiny of *Olizon* shows that this Court has not actually dispensed with the posting requirement under Section 3 of Act No. 3135, thus:

“Neither can the supposed failure of respondent bank to comply with the posting requirement as provided under the aforesaid Section 3, under the factual ambience 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 extra-judicial 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. x x x

x x x

Furthermore, unlike the situation in previous cases 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.”(Underlining added)

Obviously, as correctly pointed out by respondent, what prompted the Court to dispense with the posting requirement is the “unusual nature of the attendant facts and the peculiarity of the confluent circumstances” involved in *Olizon*. It bears stressing that in the said case, the extra-judicial foreclosure sale sought to be annulled was conducted more than 15 years ago, thus, even on the equitable ground of laches, the *Olizon*s’ action for annulment of foreclosure proceedings and certificate of sale was bound to fail.

Unlike in *Olizon* where there was a valid publication of the notice of foreclosure sale, the publication in the case at bar was defective. Not only did it fail to conform with the requirement that the notice must be published once a week for at least three consecutive weeks in a newspaper of general circulation, but also, there were substantial errors in the notice of sale published in the *Pagadian Times* as found by the scrutinizing eyes of the trial court, thus:

“As maybe noted, the published notice bespeaks of a Deed of Mortgage allegedly executed by Mindanao Grains, Inc., signed by Faustino Go, Francisco Y. Wong, Wenceslao Buenaventura and Betty C. Wong on May 9, 1978 in favor of defendant bank. The evidence, however showed that plaintiff never executed a Real Estate Mortgage (REM) on May 9, 1978. Neither plaintiff had executed any REM whereby his co-mortgagors

are MGI, Faustino Go, Wenceslao Buenaventura and his wife Betty C. Wong. What plaintiff had actually executed were two REMS dated January 18, 1977 and March 23, 1977 respectively. In other words the REM adverted to in the published notice is a non-existent document, for there was no REM of the property in question actually executed and dated May 9, 1978.

The contention of defendant bank that the erroneous date of the REM as published in the Pagadian Times was merely a clerical error would not cure the fatal defect and invalidity of that published notice. No further evidence was shown that the glaring error was corrected in the subsequent notice of publication. The court is in accord with the argument of the plaintiff that the order in the date of the REM published in the Pagadian Times is not a harmless error. It did not give proper notice to the public the correct nature of the REM which cover the properties being sold at public auction. Considering the sizable amount of the properties being sold, over half a million pesos, a very big amount to businessmen based in the Province of Zamboanga del Sur, nobody would dare to buy such properties without first carefully scrutinizing the pertinent documents, foremost of which is the REM allegedly violated by the plaintiff-mortgagor which gave rise to the foreclosure proceedings. Simply stated, serious prospective bidders just backed off upon knowing the non-existence of that REM published in the Pagadian Times. For who would participate in the auction sale of the properties covered by REMS which are non-existing? It is not surprising, therefore, to note that the defendant bank was the winning bidder, for the reason that it was the lone bidder.

And lastly, not to be glossed over is the fact that there was no evidence in Olizon insinuating bad faith or collusion among the Sheriff who conducted the sale, the Register of Deeds and the bank. In the present case, collusion is evident in the precipitate manner the foreclosure sale was conducted by Sheriff Bontia as well as in the sale made by petitioner to Betty Ong Yu during the pendency of the case.

To stress that Olizon is an exception rather than the rule, this Court in the same case held:

“x x x We are not unaware of the rulings in same 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.”

While the law recognizes the right of a bank to foreclose a mortgage upon the mortgagor's failure to pay his obligation, it is imperative that such right be exercised according to its clear mandate. Each and every requirement of the law must be complied with, lest, the valid exercise of the right would end. It must be remembered that the exercise of a right ends when the right disappears, and it disappears when it is abused especially to the prejudice of others.[6]

Anent the award of moral damages, both the trial court and the Court of Appeals found that petitioner acted in bad faith in extra-judicially foreclosing the real estate mortgage and in selling the mortgaged property during the pendency of the case in the trial court. To be sure, petitioner bank's bad faith caused serious anxiety, mental anguish and wounded feelings to its client, respondent herein. He is thus entitled to moral damages.

The Court of Appeals made a commendable ratiocination on the fact that petitioner acted in bad faith, thus:

“There is no dispute that during the pendency of the reconveyance case, appellant sold the subject property to one Betty Yu. In this regard, the trial court's observation is worth mentioning:

‘Conversely, defendant bank's most eloquent manifestation of bad faith, deception, and fraud is its sale of the mortgaged property subject of the reconveyance action while this case was already under trial. That sale was without leave of court nor the knowledge of the plaintiff. At the stage of the court proceedings when the defendants were in the process of presenting their evidence, defendant bank sold the property in litigation to Betty Yu of Molave, Zamboanga del Sur on August 8, 1984 (Exhibits FF, FF-1, FF-2 & FF-3). Accordingly,

the title of defendant bank was cancelled and a new title, TCT No. T-19,350, was issued in the name of Betty Ong Yu (Exhibits HH & HH-1). The transfer of ownership over the mortgaged property to the third person (Betty Ong Yu) who is not a party in this case rendered moot and academic the reconveyance aspect of this case, clearly to the prejudice of the plaintiff.'

Appellant's contention that there was no need for them to secure leave of court for the sale of the property because there was no notice of lis pendens annotated in the title of appellant nor was there a restraining order issued by the court enjoining them from conveying or transferring the property deserves scant consideration.

A notice of lis pendens is an announcement to the whole world that a particular real property is in litigation, serving as a warning that one who acquires an interest over the said property does so at his own risk, or that he gambles on the result of the litigation over said property (People vs. Regional Trial Court of Manila, 178 SCRA 299). The absence of a notice of lis pendens on the title of the appellant will not save the day for the appellant. The latter and the Register of Deeds are being sued with regard to the property. x x x.

Note too that no less than the deputy Register of Deeds Ramon Balinton refused to register the property subject matter of the controversy because of the pending case as evidenced by the letter addressed to the Register of Deeds. Even when directed by the Register of Deeds Pedro Jamero, he made a handwritten annotation in the document which reads: "Register per instruction of the Acting register of deeds this 31st day of August 1984." The manner by which appellant deprived appellee of his property through irregular foreclosure proceedings and its well-orchestrated scheme to frustrate reconveyance of the property by selling the same to a third person during the pendency of the case entitles appellee to moral damages.

But while the amount of moral damages is a matter left largely to the sound discretion of the trial court, the same when found excessive, should be reduced to more reasonable amounts considering the attendant facts and circumstances. Moral damages, though incapable of pecuniary estimation, are in the category of an award designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrongdoer. Moral damages are not intended to enrich a complainant at the expense of a defendant. They are awarded only to enable the injured party to obtain means, diversion or amusements that will serve to alleviate the moral sufferings he has undergone by reason of the defendant's culpable action. The award of moral damages must be proportionate to the sufferings inflicted.[7] Taking into consideration the attending circumstances here, we are convinced that the amount awarded by the Court of Appeals is exorbitant. Likewise, we find the exemplary damages and attorney's fees quite excessive.

WHEREFORE, the instant petition is hereby DENIED. The assailed Decision of the Court of Appeals is AFFIRMED subject to the MODIFICATION that the awards of moral damages be reduced to P100,000.00 and the exemplary damages to P50,000.00. The award of attorney's fees is deleted.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

[1] Rollo, pp. 60-61; Penned by Justice Antonio M. Martinez and concurred in by Justice Quirino D. Abad Santos and Justice Godardo A. Jacinto..

[2] Rollo, p. 48.

[3] 236 SCRA 148 [1994].

[4] Cristobal v. Court of Appeals, G.R. No. 124372, March 16, 2000.

[5] Gravina v. Court of Appeals, 220 SCRA 178 [1993].

[6] Tolentino, Civil Code of the Philippines, Vol. I, 1983, ed., 63.

[7] Prudenciado v. Alliance Transport System, Inc. 148 SCRA 440 (1987).

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