

DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS. COURT OF APPEALS AND EMERALD RESORT HOTEL CORPORATION, RESPONDENTS.

G.R. No. 125838. June 10, 2003

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This petition for review on certiorari[1] seeks to reverse the Joint Decision[2] of the Court of Appeals in CA-G.R. CV Nos. 38569 and 38604 dated 31 January 1996 and the Resolution dated 30 July 1996 denying the motion for reconsideration. The Court of Appeals affirmed the Decision[3] of the Regional Trial Court of Iriga City, Branch 36, declaring the foreclosure of the mortgaged properties void for failure to comply with the statutory requisites.

The Facts

Private respondent Emerald Resort Hotel Corporation ("ERHC") obtained a loan from petitioner Development Bank of the Philippines ("DBP"). DBP released the loan of P3,500,000.00 in three installments: P2,000,000.00 on 27 September 1975, P1,000,000.00 on 14 June 1976 and P500,000.00 on 14 September 1976. To secure the loan, ERHC mortgaged its personal and real properties to DBP.

On 18 March 1981, DBP approved a restructuring of ERHC's loan subject to certain conditions.[4] On 25 August 1981, DBP allegedly cancelled the restructuring agreement for ERHC's failure to comply with some of the material conditions[5] of the agreement.

Subsequently, ERHC delivered to DBP three stock certificates of ERHC aggregating 3,477,052 shares with a par value of P1.00 per share. ERHC first delivered to DBP on 20 October 1981 Stock Certificate No. 30 covering 1,862,148 shares. Then ERHC delivered on 3 November 1981 Stock Certificate No. 31 covering 691,052 shares, and on 27 November 1981 Stock Certificate No. 32 covering 923,852 shares.

On 5 June 1986, alleging that ERHC failed to pay its loan, DBP filed with the Office of the Sheriff, Regional Trial Court of Iriga City, an Application for Extra-judicial Foreclosure of Real Estate and Chattel Mortgages.

Deputy Provincial Sheriffs Abel Ramos and Ruperto Galeon issued the required notices of public auction sale of the personal and real properties. However, Sheriffs Ramos and Galeon failed to execute the corresponding certificates of posting of the notices. On 10 July 1986, the auction sale of the personal properties proceeded.

The Office of the Sheriff scheduled on 12 August 1986 the public auction sale of the real properties. The Bicol Tribune published on 18 July 1986, 25 July 1986 and 1 August 1986 the notice of auction sale of the real properties. However, the Office of the Sheriff postponed the auction sale on 12 August 1986 to 11 September 1986 at the request of ERHC. DBP did not republish the notice of the rescheduled auction sale because DBP and

ERHC signed an agreement to postpone the 12 August 1986 auction sale.[6] ERHC, however, disputes the authority of Jaime Nuevas who signed the agreement for ERHC.

In a letter dated 24 November 1986, ERHC informed DBP of its intention to lease the foreclosed properties.[7]

On 22 December 1986, ERHC filed with the Regional Trial Court of Iriga City a complaint for annulment of the foreclosure sale of the personal and real properties. Subsequently, ERHC filed a Supplemental Complaint. ERHC alleged that the foreclosure was void mainly because (1) DBP failed to comply with the procedural requirements prescribed by law; and (2) the foreclosure was premature. ERHC maintained that the loan was not yet due and demandable because the DBP had restructured the loan.

DBP moved to dismiss the complaint because it stated no cause of action and ERHC had waived the alleged procedural defenses. The trial court denied the motion to dismiss. Consequently, DBP filed its answer, claiming that it complied with the legal requirements for a valid foreclosure. DBP further claimed that it cancelled the conditional restructuring of ERHC's loan because ERHC failed to comply with some material conditions of the restructuring agreement.

Meanwhile, acting on ERHC's application for the issuance of a writ of preliminary injunction, the trial court granted the writ on 20 August 1990. Accordingly, the trial court enjoined DBP from enforcing the legal effects of the foreclosure of both the chattel and real estate mortgages.

Thereafter, trial on the merits ensued. After the parties presented their evidence, the trial court rendered a Decision[8] dated 28 January 1992, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff corporation and against the defendants:

1. Declaring as null and void the foreclosure and auction sale of the personal properties of plaintiff corporation held on July 10, 1986;
2. Declaring as null and void the foreclosure and auction sale of the real properties of plaintiff corporation covered by TCT No. RT-1075 (19980); TCT No. RT-1076 (19981); TCT No. RT-1077 (22367) and TCT No. 10244 of the Register of Deeds of Camarines Sur (now Iriga City) in the auction sale thereof held on September 11, 1986, and all the improvements therein;
3. Ordering the Register of Deeds of Camarines Sur (now Iriga City) to cancel the annotations of the Sheriff's Certificate of Sale on the aforesaid titles as null and void and without any legal effect;
4. Ordering the defendant Development Bank of the Philippines to comply with the restructuring of plaintiff corporation's loans retroactively as though the foreclosure had not taken place in the interest of justice and equity; and
5. Ordering the defendant DBP to pay plaintiff corporation moral damages in the amount of P500,000.00 for initiating what was a clearly illegal foreclosure and causing the said plaintiff corporation to suffer needlessly anguish, opprobrium and disrepute as a consequence thereto.

SO ORDERED.

Both ERHC and DBP appealed the trial court's decision to the Court of Appeals. ERHC anchored its appeal on the insufficiency of the moral damages awarded by the trial court and the absence of any award of temperate, nominal or exemplary damages. DBP's appeal, on the other hand, assailed the decision as well as the order dismissing its petition for a writ of possession.

The Court of Appeals, which consolidated the appeals, affirmed the decision of the trial court.[9] DBP filed a

Motion for Reconsideration which the Court of Appeals denied.[10]

Hence, this petition.

The Ruling of the Court of Appeals

The Court of Appeals sustained the trial court's ruling that the foreclosure was void. The Court of Appeals affirmed the trial court's finding that DBP failed to comply with the posting and publication requirements under the applicable laws. The Court of Appeals held that the non-execution of the certificate of posting of the notices of auction sale and the non-republication of the notice of the rescheduled 11 September 1986 auction sale invalidated the foreclosure.

The Court of Appeals also found that the parties perfected the restructuring agreement and that ERHC substantially complied with its conditions based on the following "circumstances":

- (a) The transmittal letter dated October 20, 1981 which relates to the progress of the restructuring of the mortgage account of Emerald Resort Hotel Corporation and that the same has been approved by the SEC (Exh. "D")
- (b) The transfer of shares of stocks to appellant DBP, the value of which are broken as follows:
 - 1. Stock certificate No. 30 for 1,862,148 shares worth P1,862,148.00 (Exhs. "D" and "D-1");
 - 2. Stock certificate No. 32 for 932,852 shares worth P953,852.00 (Exhs. "F" and "F-1");
 - 3. Stock certificate No. 031, for 691,052 shares worth P691,052.00 (Exhs. "M" and "M-5").
- (c) The acceptance of the foregoing by the DBP without raising the fact of delay as embodied in condition no. 7 of Exh. "B".
- (d) No rejection was made by the defendant-appellant DBP at the time the shares of stocks were being held by the latter.
- (e) The belated rejection of the shares of stocks was interposed only at the time the instant suit was filed which was long after the expiration of the 90-day period extended by DBP to Emerald.
- (f) No rejection was also made when plaintiff corporation did not avail of the additional loan which was allegedly part of the package accommodation.[11]

The Court of Appeals also affirmed the trial court's award of moral damages but denied ERHC's claim for temperate and exemplary damages. The Court of Appeals found that DBP's intrusion, assisted by sheriffs and several armed men, into Hotel Ibalon and the sheriffs' inventory of the hotel's furniture and fixtures caused fear and anxiety to the hotel owner, staff and guests. These acts, according to the Court of Appeals, debased the hotel's goodwill and undermined its viability warranting the award of moral damages.

Finding the foreclosure void, the Court of Appeals also denied DBP's petition for a deficiency claim and a writ of possession.

The Issues

DBP presents the following issues for resolution:

1. Whether DBP complied with the posting and publication requirements under applicable laws for a valid foreclosure.

2. Whether the restructuring agreement between DBP and ERHC was perfected and implemented by the parties before the foreclosure.
3. Whether ERHC's offer to lease the foreclosed properties constitutes a waiver of its right to question the validity of the foreclosure.
4. Whether the award of moral damages to ERHC, a juridical person, is proper.

The Court's Ruling

The petition is partly meritorious.

First Issue: Compliance with the posting and publication requirements under applicable laws

Posting requirement under Acts Nos. 3135 and 1508

In alleging that the foreclosure was valid, DBP maintains that it complied with the mandatory posting requirement under applicable laws.[12] DBP insists that the non-execution of the certificate of posting of the auction sale notices did not invalidate the foreclosure.

We agree.

This Court ruled in *Cristobal v. Court of Appeals*[13] that a certificate of posting is not required, much less considered indispensable for the validity of an extrajudicial foreclosure sale of real property under Act No. 3135. *Cristobal* merely reiterated the doctrine laid down in *Bohanan v. Court of Appeals*. [14] In the present case, the foreclosing sheriffs failed to execute the certificate of posting of the auction sale notices. However, this fact alone does not prove that the sheriffs failed to post the required notices. As held in *Bohanan*, "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." [15]

Based on the records, DBP presented sufficient evidence to prove that the sheriffs posted the notices of the extrajudicial sale. The trial and appellate courts glaringly erred and gravely abused its discretion in disregarding the sheriffs' partial report and the sheriffs' certificate of sale executed after the auction sale. A careful examination of these two documents clearly shows that the foreclosing sheriffs posted the required notices of sale.

The partial report dated 10 July 1986 signed by both Sheriff Abel Ramos and Deputy Sheriff Ruperto Galeon states in part:

That on July 1, 1986, the undersigned sheriffs posted the notice of public auction sale of chattel mortgage in the conspicuous places, and at the Iriga City Hall Bulletin Board, including Ibalon Hotel, Iriga City xxx.[16] (Emphasis supplied)

Similarly, the certificate of sale of the real properties signed by both Sheriff Ramos and Deputy Sheriff Galeon on 11 September 1986 states in part:

I, FURTHERMORE CERTIFY that the Notice of Sale was published in BICOL TRIBUNE, a newspaper of general circulation in the province of Camarines Sur, for three (3) consecutive weeks and three (3) copies of the notices of sale were posted in three (3) public places of the City where the properties are located for no less than twenty (20) days before the sale. [17] (Emphasis supplied)

Deputy Sheriff Galeon also testified that he, together with Sheriff Ramos,[18] actually posted the notices of sale.[19] Indisputably, there is clear and convincing evidence of the posting of the notices of sale. What the law requires is the posting of the notice of sale, which is present in this case, and not the execution of the certificate of posting.

Moreover, ERHC bore the burden of presenting evidence that the sheriffs failed to post the notices of sale.[20] In the absence of contrary evidence, as in this case, the presumption prevails that the sheriffs performed their official duty of posting the notices of sale. Consequently, we hold that the non-execution of the certificate of posting cannot nullify the foreclosure of the chattel and real estate mortgages in the instant case.

Publication requirement under Act No. 3135

Having shown that there was posting of the notices of auction sale, we shall now resolve whether there was publication of the notice of sale of the real properties in compliance with Act No. 3135.[21]

There is no question that DBP published the notice of auction sale scheduled on 12 August 1986. However, no auction sale took place on 12 August 1986 because DBP, at the instance of ERHC, agreed to postpone the same to 11 September 1986. DBP contends that the agreement to postpone dispensed with the need to publish again the notice of auction sale. Thus, DBP did not anymore publish the notice of the 11 September 1986 auction sale. DBP insists that the law does not require republication of the notice of a rescheduled auction sale. Consequently, DBP argues vigorously that the extrajudicial foreclosure of the real estate mortgage is valid.

We do not agree.

The Court held recently in *Ouano v. Court of Appeals*[22] that republication in the manner prescribed by Act No. 3135 is necessary for the validity of a postponed extrajudicial foreclosure sale. Another publication is required in case the auction sale is rescheduled, and the absence of such republication invalidates the foreclosure sale.

The Court also ruled in *Ouano* that the parties have no right to waive the publication requirement in Act No. 3135. The Court declared thus:

Petitioner further contends that republication may be waived voluntarily by the parties.

This argument has no basis in law. The issue of whether republication may be waived is not novel, as we have passed upon the same query in *Philippine National Bank v. Nepomuceno Productions Inc.* Petitioner therein sought extrajudicial foreclosure of respondent's mortgaged properties with the Sheriff's Office of Pasig, Rizal. Initially scheduled on August 12, 1976, the auction sale was rescheduled several times without republication of the notice of sale, as stipulated in their Agreements to Postpone Sale. Finally, the auction sale proceeded on December 20, 1976, with petitioner as the highest bidder. Aggrieved, respondents sued to nullify the foreclosure sale. The trial court declared the sale void for non-compliance with Act No. 3135. This decision was affirmed in toto by the Court of Appeals. Upholding the conclusions of the trial and appellate courts, we held:

Petitioner and respondents have absolutely no right to waive the posting and publication requirements of Act No. 3135.

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Publication, therefore, is required to give the foreclosure sale a reasonably wide publicity such that those interested might attend the public sale. To allow the parties to waive this jurisdictional requirement would result in converting into a private sale what ought to be a public auction.

DBP further asserts that Section 24, Rule 39 of the Rules of Court, which allows adjournment of execution sales by agreement of the parties, applies to the present case. Section 24 of Rule 39 provides:

Sec. 24. Adjournment of Sale — By written consent of debtor and creditor, the officer may adjourn any sale upon execution to any date agreed upon in writing by the parties. Without such agreement, he may adjourn the sale from day to day, if it becomes necessary to do so for lack of time to complete the sale on the day fixed in the notice.

The Court ruled in *Ouano* that Section 24 of Rule 39 does not apply to extrajudicial foreclosure sales, thus:

Petitioner submits that the language of the abovesited provision[23] implies that the written request of the parties suffices to authorize the sheriff to reset the sale without republication or reposting.

At the outset, distinction should be made of the three different kinds of sales under the law, namely: an ordinary execution sale, a judicial foreclosure sale, and an extrajudicial foreclosure sale. An ordinary execution sale is governed by the pertinent provisions of Rule 39 of the Rules of Court. Rule 68 of the Rules of Court applies in cases of judicial foreclosure sale. On the other hand, Act No. 3135, as amended by Act No. 4118 otherwise known as "An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgages" applies in cases of extrajudicial foreclosure sale. A different set of law applies to each class of sale mentioned. The cited provision in the Rules of Court hence does not apply to an extrajudicial foreclosure sale. (Emphasis supplied)

DBP also maintains that ERHC's act of requesting postponement of the 12 August 1986 auction sale estops ERHC from challenging the absence of publication of the notice of the rescheduled auction sale.

We do not agree.

ERHC indeed requested postponement of the auction sale scheduled on 12 August 1986.[24] However, the records are bereft of any evidence that ERHC requested the postponement without need of republication of the notice of sale. In *Philippine National Bank v. Nepomuceno Productions Inc.*,[25] the Court held that:

x x x To request postponement of the sale is one thing; to request it without need of compliance with the statutory requirements is another. Respondents, therefore, did not commit any act that would have estopped them from questioning the validity of the foreclosure sale for non-compliance with Act No. 3135. x x x

The form of the notice of extrajudicial sale is now prescribed in Circular No. 7-2002[26] issued by the Office of the Court Administrator on 22 January 2002. Section 4(a) of Circular No. 7-2002 provides that:

Sec. 4. The Sheriff to whom the application for extra-judicial foreclosure of mortgage was raffled shall do the following:

a. Prepare a Notice of Extra-judicial Sale using the following form:

"NOTICE OF EXTRA-JUDICIAL SALE"

"Upon extra-judicial petition for sale under Act 3135/1508 filed _____ against (name and address of Mortgagor/s) to satisfy the mortgage indebtedness which as of _____ amounts to P _____ excluding penalties, charges, attorney's fees and expenses of foreclosure, the undersigned or his duly authorized deputy will sell at public auction on (date of sale) _____ at 10:00 A.M. or soon thereafter at the main entrance of the _____ (place of sale) to the highest bidder, for cash or manager's check and in Philippine Currency, the following property with all its improvements, to wit:

"(Description of Property)"

"All sealed bids must be submitted to the undersigned on the above stated time and date."

"In the event the public auction should not take place on the said date, it shall be held on _____, _____ without further notice."

_____ (date)

"SHERIFF" (Emphasis supplied)

The last paragraph of the prescribed notice of sale allows the holding of a rescheduled auction sale without

reposting or republication of the notice. However, the rescheduled auction sale will only be valid if the rescheduled date of auction is clearly specified in the prior notice of sale. The absence of this information in the prior notice of sale will render the rescheduled auction sale void for lack of reposting or republication. If the notice of auction sale contains this particular information, whether or not the parties agreed to such rescheduled date, there is no more need for the reposting or republication of the notice of the rescheduled auction sale.

The Office of the Court Administrator issued Circular No. 7-2002 pursuant to the 14 December 1999 Resolution of this Court in A.M. No. 99-10-05-0, as amended by the Resolutions of 30 January 2001 and 7 August 2001. The Court issued these Resolutions for two reasons.

First, the Court seeks to minimize the expenses which the mortgagee incurs in publishing the notice of extrajudicial sale. With the added information in the notice of sale, the mortgagee need not cause the reposting and republication of the notice of the rescheduled auction sale. There is no violation of the notice requirements under Acts Nos. 3135 and 1508 precisely because the interested parties as well as the public are informed of the schedule of the next auction sale, if the first auction sale does not proceed. Therefore, the purpose of a notice of sale, which is to notify the mortgagor and the public of the foreclosure sale, is satisfied.

Second, the Court hopes to deter the practice of some mortgagors in requesting postponement of the auction sale of real properties, then later attacking the validity of the foreclosure for lack of republication. This practice will only force mortgagees to deny outright requests for postponement by mortgagors since it will only mean added publication expense on the part of mortgagees. Such development will eventually work against mortgagors because mortgagees will hesitate to grant postponements to mortgagors.

In the instant case, there is no information in the notice of auction sale of any date of a rescheduled auction sale. Even if such information were stated in the notice of sale, the reposting and republication of the notice of sale would still be necessary because Circular No. 7-2002 took effect only on 22 April 2002. There were no such guidelines in effect during the questioned foreclosure.

Clearly, DBP failed to comply with the publication requirement under Act No. 3135. There was no publication of the notice of the rescheduled auction sale of the real properties. Therefore, the extrajudicial foreclosure of the real estate mortgage is void.

DBP, however, complied with the mandatory posting of the notices of the auction sale of the personal properties. Under the Chattel Mortgage Law,[27] the only requirement is posting of the notice of auction sale. There was no postponement of the auction sale of the personal properties and the foreclosure took place as scheduled. Thus, the extrajudicial foreclosure of the chattel mortgage in the instant case suffers from no procedural infirmity.

Second Issue: Perfection and implementation of the restructuring agreement between DBP and ERHC

ERHC consistently argues that its restructuring agreement with DBP was perfected and even implemented by the parties. ERHC maintains that the delivery of its certificates of stocks to DBP was part of its compliance with the conditions of the restructuring agreement.

We do not agree.

Contrary to ERHC's allegations and the Court of Appeals' findings, the restructuring agreement was never perfected. ERHC failed to comply with the material conditions for the perfection of the restructuring agreement. As specified in DBP Resolution No. 956 dated 19 March 1981[28] approving the restructuring agreement, the following are the conditions for the restructuring agreement:

RESOLUTION NO. 956. Emerald Resort Hotel Corporation (Hotel Ibalon) — Conversion Into Common and/or

Preferred Shares of P2,786,000.00 Representing 40% of the Total Outstanding Obligations; a Third Additional Loan of P679,000.00 and Restructuring of the Account.

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In view thereof and as favorably recommended by the Manager of the Industrial Projects Department III in her memorandum dated February 24, 1981, the Board, upon motion made and duly seconded, APPROVED in favor of Emerald Resort Hotel Corporation (Hotel Ibalon) the following:

1. Immediate conversion into common and/or preferred shares at borrower's option, of P2,786,000.00 representing 40% of the total outstanding obligation as of May 15, 1980, in the reduced amount of P6,965,000.00 composed of outstanding principal balance of P3,500,000.00 and total arrearages on interest and other charges of P3,465,000.00, the conversion price to be equal to the par value of the shares;
2. A third additional loan of Six Hundred Seventy-Nine Thousand Pesos (P679,000.00), payable quarterly under the same restructured terms of the original and two (2) additional loans, at 18% interest per annum; and
3. Restructuring of the firm's total outstanding principal obligation of P3,500,000.00 in the form of extension of grace period on principal repayment from two (2) years to nine (9) years to make a maximum loan term of nineteen (19) years, regular amortizations to commence three (3) months after the end of the extended grace period on October 31, 1985 and payable quarterly at the following interest rates:

Original Loan - P1,425,800 at 16% interest per annum

- 574,200 at 18% interest per annum

1[st] Additional Loan - 1,000,000 at 18% interest per annum

- 500,000 at 18% interest per annum

Total

- P3,500,000

subject to the following terms and conditions:

A. For the P679,000.00 Additional Loan

- a. That subject-firm shall first pay the amount of P473.00 to reduce its total arrearages on interest and other charges of P3,465,473.00 as of May 15, 1980 to P3,465,000.00; and
- b. That the proceeds of this additional loan shall be applied to subject-firm's accrued interest and other charges due DBP as of May 15, 1980 not otherwise covered by the proposed equity conversion of P2,786,000.00.

B. For Both Additional Loan and Restructuring

- a. That a quasi-reorganization shall first be undertaken for the purpose of eliminating existing deficits, which should be formally authorized by the stockholders of the corporation, should comply with legal requirements, and should be approved by the Securities and Exchange Commission which sees to it that the rights of creditors are not prejudiced.

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- e. That subject-firm shall apply with SEC for an amendment of its authorized capitalization to include preferred shares in case immediate conversion into equity of 40% of the total outstanding obligation as of May 15, 1980 will include preferred shares.

xxx (Emphasis supplied)

A careful review of the facts and the evidence presented by the parties discloses that ERHC failed to comply with the terms and conditions set forth in DBP Resolution No. 956.

First, ERHC failed to comply with the important condition of converting into equity 40 percent of its outstanding debt to DBP. ERHC did not present any evidence to show that it complied with this particular requirement. While it is true that ERHC delivered to DBP certificates of stocks, it was to comply with ERHC's commitment under the original mortgage contracts.[29] ERHC committed to pledge or assign to DBP at least 67 percent of its outstanding shares to secure the original loan accommodation. The original mortgage contracts contain the following condition:

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c. By an assignment to the Mortgagee of not less than 67% of the total subscribed and outstanding voting shares of the company. The said percentages of shares assigned shall be maintained at all times and the said assignment to subsist for as long as the Assignee may deem necessary during the existence of the Mortgagee's approved accommodation. xxx[30]

On 17 April 1985, DBP informed ERHC that it had not complied with the condition in the original mortgage contract on the assignment of 67 percent of its outstanding shares to DBP. The letter of DBP states in part:

2. The condition requiring ERHC to assign in favor of DBP at least 67% of the subscribed and outstanding voting shares of company has not been met.

Of the 4,917,500 outstanding voting shares as of December 31, 1982, only 911,800 shares have been assigned instead of 3,294,725 (67% of 4,917,000), more of the outstanding voting shares have increased. [31]

The deficiency of 2,382,925 shares (3,294,725 — 911,800) may however be covered by the 2,786,000 shares you transferred in the name of DBP as an alternative compliance with 65% requirement. (Emphasis supplied)

In its reply letter dated 11 June 1985 to DBP, ERHC signified its readiness to assign 67 percent of its outstanding shares to DBP. Thus, ERHC's reply letter, signed by its President Atty. Jose C. Reyes, states in part:

With reference to your letter dated 17 April 1985 which could not be seasonably acted upon on account of my absence from the country for medical reasons, I am pleased to inform your goodself of the action taken on the various items thereon enumerated, to wit:

1. x x x

2. Assignment of 67% of outstanding voting shares.

We are ready to bring up the assigned shares in favor of DBP to 67% of the corporation's outstanding voting shares of 4,917,500 as of December 31, 1982 or total of 3,294,725 shares.

The corporation will maintain its previous assignment of 911,800 shares.

Moreover, the corporation is agreeable that Stock Certificate No. 030 for 1,862,148 shares which had been transferred to DBP be considered as an alternative compliance to the raising of DBP's assigned shares to the full 67% or 3,294,725 shares. Your formal conformity to this arrangement is likewise requested.

Finally, the corporation will further assign to DBP another 520,777 shares in exchange of Stock Certificate No. 032 for 923,852 shares which was transferred to DBP conditionally. This Stock Certificate has to be surrendered to the corporation for cancellation before we can issue by way of further assignment the 520,777 shares. In short, the 3 blocks of shares mentioned above would result as follows:

1.

911,800

shares

2.

1,862,148

shares

3.

520,777

shares

Total

-3,294,725

shares of 67% outstanding voting shares

x x x. [32]

Clearly, when ERHC delivered the certificates of stocks, it was to comply with ERHC's commitment under the original mortgage contracts, not the restructuring agreement.

Besides, there is a vast difference between an assignment of shares to DBP by existing stockholders and conversion of DBP's loan into equity of ERHC. In the first, the paid-up capital of ERHC remains the same. In the latter, the paid-up capital of ERHC, as well as its liabilities, changes in that the liabilities are transferred to the capital account to the extent of the conversion. The latter case, which is the conversion of debt into equity required under the restructuring agreement, never happened. The delivery to DBP of stock certificates representing 3,294,725 ERHC shares did not reduce the liabilities of ERHC. The reason for the requirement to convert P2,786,000.00 in liabilities of ERHC into equity was to reduce ERHC's debt to equity ratio, which the assignment and delivery of the stock certificates did not and could not have achieved.

Second, ERHC did not avail of the P679,000.00 additional loan, despite this being a material condition of the restructuring agreement. ERHC could not simply refuse to avail of the additional loan because the proceeds of this loan were to pay the balance of ERHC's accrued interest and other charges due DBP as of 15 May 1980. Clearly, ERHC's refusal to avail of the additional loan, intended to up-date ERHC's loan account, prevented the perfection of the restructuring agreement.

Lastly, ERHC failed to comply with the quasi-reorganization requirement, as clearly admitted in ERHC's letter dated 3 November 1982 to DBP, thus:

3. On July 31, 1981, we once more communicated with your Naga Branch advising of the Emerald Resort Hotel Corporation's Stockholders Resolution approving the quasi-reorganization and the Petition filed with the Securities and Exchange Commission requesting approval of the corporation's resolution on quasi-reorganization and the transfer of 1,862,148 shares in favor of the DBP, copy whereof is attached as Annex "C";

4. On September 7, 1981, we received by personal delivery a letter from Manager Mario C. Leaño, copy whereof is attached as Annex "D". In our conversation had on this occasion, I reiterated our request in our letter dated 19 June 1981 that in view of the circumstances affecting our papers in the Securities and Exchange Commission there was need to extend our period of compliance.

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It will thus be noted from the foregoing communications that we have exerted our utmost best to comply with the conditions for the re-structuring of our loan accounts and all have been complied, with the exception of the quasi-reorganization, for reasons beyond our legal control since it is the SEC that passes upon the question as to whether or not we meet the SEC guidelines for a quasi-reorganization. Unfortunately, for the reasons stated in Annex "H" and the enclosures thereto, the SEC felt that ERHC was not within their guidelines for a quasi-reorganization.[33] (Emphasis supplied)

The quasi-reorganization is required specifically to eliminate ERHC's existing deficits. However, the SEC must first approve the quasi-reorganization which approval ERHC admittedly failed to secure. Through no fault of DBP, SEC disapproved ERHC's application for quasi-reorganization.

Considering that ERHC failed to comply with the material conditions of the restructuring agreement, the agreement was never implemented or even perfected. The perfection and implementation of the restructuring agreement were expressly subject to the following conditions embodied in DBP Resolution No. 956 and in DBP's notice of approval to ERHC, respectively:

t. x x x Implementation of the restructuring scheme as approved shall take effect upon compliance with the terms and conditions and with all the legal and documentation requirements;[34]

x x x x x x x x

7. All documents for this loan approval shall be executed and perfected within 90 days from the date of this notice; otherwise, this accommodation shall be automatically cancelled.[35]

The trial and appellate courts gravely misapprehended the facts and made manifestly mistaken inferences in finding that the parties had perfected the restructuring agreement. Consequently, when DBP filed the application for extrajudicial foreclosure of the chattel and real estate mortgages, ERHC was already in default in paying its debt to DBP.

Third Issue: ERHC's offer to lease the foreclosed properties

ERHC offered to lease from DBP the foreclosed properties after the auction sale. DBP argues that when ERHC offered to lease from DBP the foreclosed properties, ERHC waived its right to question the validity of the foreclosure.

We do not agree.

To constitute a waiver, the intent to waive must be shown clearly and convincingly.[36] A mere offer to lease the foreclosed properties cannot constitute a waiver of ERHC's right to contest the validity of the foreclosure on the ground of non-compliance with the statutory requisites. ERHC's offer to lease does not relinquish ERHC's right to challenge the validity of the foreclosure. The offer to lease the foreclosed properties cannot validate or ratify a void foreclosure. ERHC's intention to lease the foreclosed properties cannot simply outweigh DBP's failure to comply with the statutory requisite for a valid extrajudicial foreclosure. As the Court of Appeals correctly ruled, "there can be no waiver of the posting and publication requirements in foreclosure proceedings because the same is contrary to law and public order."

Fourth Issue: Award of moral damages

DBP maintains that ERHC, a juridical person, is not entitled to moral damages. ERHC counters that its reputation was debased when the sheriffs and several armed men intruded into Hotel Ibalon's premises and inventoried the furniture and fixtures in the hotel.

The Court of Appeals erred in awarding moral damages to ERHC. The Court of Appeals' sole basis for its ruling is a quoted portion of the testimony of ERHC's President, Atty. Jose Reyes. The testimony was not even offered to prove the justification and amount of damages which ERHC claims against DBP. In other words, ERHC failed to present evidence to warrant the award of moral damages. In a long line of decisions, this Court has held that the claimant for moral damages must present concrete proof to justify its award, thus:

xxx while no proof of pecuniary loss is necessary in order that moral damages may be awarded, the amount of indemnity being left to the discretion of the court (Art. 2216), it is, nevertheless, essential that the claimant satisfactorily prove the existence of the factual basis of the damage (Art. 2217) and its causal relation to defendant's acts. This is so because 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.[37] (Emphasis supplied)

In the body of its decision, the trial court gave no basis to justify the award of moral damages. The trial court simply awarded moral damages in the dispositive portion of its decision.[38]

Moreover, as a general rule, moral damages are not awarded to a corporation, thus:

The award of moral damages cannot be granted in favor of a corporation because, being an artificial person and having existence only in legal contemplation, it has no feelings, no emotions, no senses. It cannot, therefore, experience physical suffering and mental anguish, which can be experienced only by one having a nervous system. The statement in *People v. Manero and Mambulao Lumber Co. v. PNB* that a corporation may recover moral damages if it "has a good reputation that is debased, resulting in social humiliation" is an obiter dictum. On this score alone the award for damages must be set aside, since RBS is a corporation.[39]

WHEREFORE, the Joint Decision of the Court of Appeals in CA-G.R. CV Nos. 38569 and 38604 is **AFFIRMED** with **MODIFICATION**. The extrajudicial foreclosure of the chattel mortgage is valid whereas the extrajudicial foreclosure of the real estate mortgage is void. The award of moral damages is deleted for lack of basis. No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, Ynares-Santiago, and Azcuna, JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Celia Lipana-Reyes and concurred in by Associate Justices Alfredo L. Benipayo and Corona Ibay-Somera.

[3] Penned by Judge Ulysses V. Salvador.

[4] Exhibit "15," Records.

[5] Rollo, p. 193.

[6] Exhibit "35," Records.

[7] Exhibit "21," *ibid*.

[8] Rollo, pp. 62-73.

[9] Ibid., pp. 9-23.

[10] Ibid., p. 25.

[11] Ibid., p. 18.

[12] Act No. 3135 is entitled "An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgages." Act No. 1508 is entitled "An Act Providing for the Mortgaging of Personal Property and for the Registration of the Mortgages so Executed."

Section 3 of Act No. 3135 provides as follows: "Notice shall be given by posting notices of the sale for not less than 20 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 or city."

Section 14 of Act No. 1508 provides as follows: "(1) Notices shall be posted at least ten (10) days in at least two public places in the municipality where the mortgaged property is sold, designating the time, place and purpose of the sale. xxx"

[13] G.R. No. 124372, 16 March 2000, 328 SCRA 256.

[14] G.R. No. 111654, 18 April 1996, 256 SCRA 355.

[15] See also *Francisco v. Cruz*, A. M. No. P-93-990 and A.M. No. P-94-1042, 8 September 2000, 340 SCRA 76.

[16] Exhibit "33-C," Records.

[17] Exhibit "38-A," *ibid.*

[18] Sheriff Abel Ramos did not testify because he died before the trial. Rollo, p. 210.

[19] TSN, 7 November 1989, pp. 24-25; TSN, 5 February 1990, pp. 15-16.

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

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

[22] G.R. No. 129279, 4 March 2003 citing *Tambunting v. Court of Appeals*, G.R. No. L-48278, 8 November 1988, 167 SCRA 16, and *Philippine National Bank v. Nepomuceno Productions Inc.*, G.R. No. 139479, 27 March 2002.

[23] Refers to Section 24, Rule 39 of the Rules of Court.

[24] Exhibits "34" and "35," Records; TSN, 29 October 1991, pp. 17-18,

[25] G.R. No. 139479, 27 March 2002.

[26] Guidelines for the Enforcement of Supreme Court Resolution of 14 December 1999 in Administrative Matter No. 99-10-05-0 (Re: Procedure in Extra-Judicial Foreclosure of Mortgage), As Amended by the Resolutions Dated 30 January 2001 and 7 August 2001.

[27] Act No. 1508, as amended.

[28] *Supra*, see note 4.

[29] Exhibits "12," "13," "14" and "K-2," Records.

[30] Exhibits "13" and "14," *ibid*.

[31] Exhibit "7," *ibid*.

[32] Exhibit "6," *ibid*.

[33] Exhibit "M," Records.

[34] Paragraph B of Exhibit "15," *ibid*.

[35] Exhibit "1-E," *ibid*.

[36] *Thomson v. Court of Appeals*, 358 Phil. 761 (1998); *Lang v. Acting Provincial Sheriff of Surigao*, 93 Phil. 661 (1953).

[37] *Enervida v. De la Torre*, 154 Phil. 301 (1974) citing *Algarra v. Sandejas*, 27 Phil. 284 (1914).

[38] *Supra*, see note 8.

[39] *ABS-CBN Broadcasting Corp. v. Court of Appeals*, 361 Phil. 499 (1999); *Napocor v. Philipp Brothers Oceanic, Inc.*, G.R. No. 126204, 20 November 2001.

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