

ALFREDO M. OUANO, PETITIONER, VS. COURT OF APPEALS, AND HEIRS OF JULIETA M. OUANO, RESPONDENTS.

G.R. No. 129279. March 04, 2003

Ponente: AZCUNA, J.

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AZCUNA, J.:

Before us is a petition for review on certiorari against the decision and resolution of the Court of Appeals on CA-GR CV No. 33499[1] affirming the decision of the Regional Trial Court of Cebu, Branch 19, in Civil Case No. CEB-596, which set aside the extrajudicial foreclosure proceedings involving respondents' properties.

From the documentary evidence and the Stipulation of Facts[2] filed by the parties before the Regional Trial Court of Cebu, the facts of the case are, as follows:

On June 8, 1977, respondent Julieta M. Ouano (Julieta), now deceased, obtained a loan from the Philippine National Bank (PNB) in the amount of P104,280.00. As security for said loan, she executed a real estate mortgage over two parcels of land located at Opao, Mandaue City.[3] She defaulted on her obligation. On September 29, 1980, PNB filed a petition for extrajudicial foreclosure with the City Sheriff of Mandaue City.

On November 4, 1980, the sheriff prepared a notice of sale setting the date of public auction of the two parcels of land on December 5, 1980 at 9:00 a.m. to 4:00 p.m.[4] He caused the notice to be published in the Cebu Daily Times, a newspaper of general circulation in Mandaue City, in its issues of November 13, 20 and 27, 1980.[5] He likewise posted copies thereof in public places in Mandaue City and in the place where the properties are located.[6]

However, the sale as scheduled and published did not take place as the parties, on four separate dates, executed Agreements to Postpone Sale (Agreements).[7] These Agreements were addressed to the sheriff, requesting the latter to defer the auction sale to another date at the same time and place, "without any further republication of the Notice." The first of the four pro-forma Agreements reads, as follows:

AGREEMENT TO POSTPONE SALE

Provincial Sheriff
Mandaue City

Sir:

In accordance with this agreement of the parties in the above named case, it is respectfully requested that the auction sale of the properties of the mortgagor, scheduled to take place on December 5, 1980 at 9:00 o'clock in the morning at Office of the City Sheriff of Mandaue City be postponed to February 5, 1981, at the same time and place, without any further republication of the notice of sale as required by law. *[italics supplied]*

Cebu City, December 11, 1980.

PHILIPPINE NATIONAL BANK

(Mortgagee)

By: _____
(SGD.) F.B. Briones
Cebu Branch
Branch Attorney

(SGD.) JULIETA M. OUANO
(Mortgagor)
Address: Opao, Mandaue City

On December 3, 1980, two days prior to the date of the sale as published, the parties executed and filed with the sheriff the Agreement to Postpone Sale moving the date of sale from December 5, 1980 to February 5, 1981.[8] On February 5, 1981, however, no sale occurred.

Eight days later, on February 13, 1981, the parties executed and filed for the second time a similar agreement moving the date of sale to February 28, 1981.[9] Again, on February 28, 1981, no sale occurred.

Ten days later, on March 10, 1981, the parties executed and filed for the third time a similar agreement moving the date of sale to March 30, 1981.[10] No sale occurred on this date.

On March 30, 1981, the parties executed for the fourth time a similar agreement moving the date of sale to May 29, 1981.[11] This agreement was filed with the sheriff on April 30, 1981.

In all these postponements, no new notice of sale was issued, nor was there any republication or reposting of notice for the rescheduled dates.

Finally, on May 29, 1981, the sheriff conducted the auction sale, awarding the two parcels of land to PNB, the only bidder. He executed a Certificate of Sale certifying the sale for and in consideration of P195, 510.50.[12]

As Julieta failed to redeem the properties within the one year period from registration of sale, PNB consolidated its title on February 12, 1983.[13] On February 23 of the same year, it conveyed the properties to herein petitioner Alfredo Ouano, the brother of Julieta, under a Deed of Promise to Sell payable in five years.[14]

On March 28, 1983, Julieta sent demand letters to PNB and petitioner, pointing out irregularities in the foreclosure sale.[15] On April 18, 1983, Julieta filed a complaint with the Regional Trial Court (RTC) of Cebu for the nullification of the May 29, 1981 foreclosure sale.[16] Petitioner filed a motion for leave to intervene in said case, and filed his Answer in Intervention to protect his rights over the properties.[17]

While the case was pending, on February 25, 1986, PNB executed a Deed of Sale in favor of petitioner.[18] The Register of Deeds of Mandaue City accordingly cancelled the TCTs in PNB's name and issued in lieu thereof TCTs in the name of petitioner over the two parcels of land.[19]

On January 29, 1990, the Regional Trial Court of Cebu rendered a decision in favor of Julieta, holding that the lack of republication rendered the foreclosure sale void. The dispositive portion of said decision states:

WHEREFORE, judgment is hereby rendered,

- declaring as null and void:

- the auction sale by the City Sheriff of Mandaue City on May 29, 1981 over the aforesaid properties of plaintiff Julieta Ouano;

- the Certificate of Sale (Exhibit K) issued by the City Sheriff of Mandaue City on May 29, 1981, in favor of the Philippine National Bank;
- the Deed of Sale (Exhibit L) executed by PNB to itself;
- the Deed of Promise to Sell (Exhibit O) executed by PNB on February 23, 1983 in favor of Alfredo Ouano
- the Deed of Sale (Exhibit 24) executed by PNB on February 5, 1986 in favor of Alfredo Ouano;
- TCT No. 17929 (Exhibit M) and TCT No. 17930 (Exhibit N) in the name of PNB;
- TCT No. 21982 (Exhibit 21) and TCT No. 21987 (Exhibit 22) in the name of Alfredo Ouano;
- ordering the Register of Deeds of Mandaue City to cancel the aforementioned titles (TCT Nos. 17929 and 17930, as well as TCT Nos. 21982 and 21987), and to reinstate TCT Nos. 15724 (5033) and 24377 (6876) in the name of Julieta Ouano;
- ordering the City Sheriff of Mandaue City to conduct a new auction sale strictly complying with the requirements for publication and posting as required by Act 3135, as amended by Act 4118;
- ordering PNB to return to Alfredo Ouano all amounts the latter has paid to the said bank;
- ordering Alfredo Ouano to vacate the premises in question and turn them over to Julieta Ouano;
- ordering PNB to pay the plaintiff the sum equivalent to 10% of the market value of the properties in question as indicated in Tax Declaration Nos. 01134 and 00510, as attorney's fees, and to pay the costs.

SO ORDERED.[20]

Not satisfied, PNB and petitioner brought the case to the Court of Appeals.[21] In its decision dated February 17, 1997, said court affirmed the trial court's ruling on the same ground that there was no compliance with the mandatory requirements of posting and publication of notice of sale.[22] Petitioner filed a motion for reconsideration, which was denied for lack of merit by the same court on April 15, 1997.[23]

PNB and petitioner filed their own petitions for review on certiorari before us. PNB's petition however was dismissed on July 21, 1997 for being filed out of time and for lack of certification of non-forum-shopping.[24] The petition herein remaining is the one filed by petitioner.

Petitioner assigns the following errors:

- RESPONDENT COURT OF APPEALS ERRED IN SUSTAINING THE FINDING OF THE LOWER COURT THAT THE POSTPONED AUCTION SALE OF SUBJECT PROPERTIES HELD ON MAY 29, 1981 UPON WRITTEN AGREEMENT OF THE PARTIES WAS NULL AND VOID FOR LACK OF PUBLICATION OF NOTICE OF SALE ON THE SAID DATE ALTHOUGH THE REQUIREMENTS OF PUBLICATION OF NOTICE OF SALE ON THE ORIGINALLY INTENDED DATE [WERE] FULLY COMPLIED WITH.
- RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT THE PROVISION OF SEC. 24, RULE 39 OF THE RULES OF COURT WHICH ALLOWS THE SHERIFF TO ADJOURN ANY SALE UPON EXECUTION TO ANY DATE AGREED UPON BY THE PARTIES IS NOT APPLICABLE TO THIS CASE.
- RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT JULIETA M. OUANO IS NOT ESTOPPED FROM CHALLENGING THE VALIDITY OF THE AUCTION SALE SINCE THE SALE WAS REPEATEDLY POSTPONED UPON HER REQUEST AND WRITTEN AGREEMENT[S] THAT THERE WOULD BE NO REPUBLICATION OF THE NOTICE OF SALE.

- RESPONDENT COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE LOWER COURT ALTHOUGH JULIETA M. OUANO FILED HER COMPLAINT AFTER ALMOST TWO YEARS FROM THE DATE OF THE AUCTION SALE.[25]

The main issue before us is whether or not the requirements of Act No. 3135 were complied with in the May 29, 1981 foreclosure sale.

The governing law for extrajudicial foreclosures is Act No. 3135 as amended by Act No. 4118. The provision relevant to this case is Section 3, which provides:

SEC. 3. Notice shall be given by posting notices of the sale for not less than twenty (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 of city.

It is a well-settled rule 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.[26] In a number of cases, we have consistently held that failure to advertise a mortgage foreclosure sale in compliance with statutory requirements constitutes a jurisdictional defect invalidating the sale.[27] Consequently, such defect renders the sale absolutely void and no title passes.[28]

Petitioner, however, insists that there was substantial compliance with the publication requirement, considering that prior publication and posting of the notice of the first date were made.

In *Tambunting v. Court of Appeals*,[29] we held that republication in the manner prescribed by Act No. 3135 is necessary for the validity of a postponed extrajudicial foreclosure sale. Thus we stated:

Where required by the statute or by the terms of the foreclosure decree, public notice of the place and time of the mortgage foreclosure sale must be given, a statute requiring it being held applicable to subsequent sales as well as to the first advertised sale of the property. [italics supplied].

Petitioner further contends that republication may be waived voluntarily by the parties.[30]

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.*,[31] 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 re-scheduled 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 court, we categorically held:

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

In *People v. Donato*, the Court expounded on what rights and privileges may be waived, viz.:

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[T]he principle is recognized that everyone has a right to waive, and agree to waive, the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity, if it can be dispensed with and relinquished without infringing on any public right, and without detriment to the community at large.

xxx xxx xxx

Although the general rule is that any right or privilege conferred by statute or guaranteed by constitution may be waived, a waiver in derogation of a statutory right is not favored, and a waiver will be inoperative and void if it infringes on the rights of others, or would be against public policy or morals and the public interest may be waived.

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The principal object of a notice of sale in a foreclosure of mortgage is not so much to notify the mortgagor as to inform the public generally of the nature and condition of the property to be sold, and of the time, place, and terms of the sale. Notices are given to secure bidders and prevent a sacrifice of the property. Clearly, the statutory requirements of posting and publication are mandated, not for the mortgagor's benefit, but for the public or third persons. In fact, personal notice to the mortgagor in extrajudicial foreclosure proceedings is not even necessary, unless stipulated. As such, it is imbued with public policy considerations and any waiver thereon would be inconsistent with the intent and letter of Act No. 3135.

Publication, therefore, is required to give the foreclosure sale a reasonably wide publicity such that those interested might attend the public sale.[32] To allow the parties to waive this jurisdictional requirement would result in converting into a private sale what ought to be a public auction.

Moreover, assuming *arguendo* that the written waivers are valid, we find noticeable flaws that would nevertheless invalidate the foreclosure proceedings. First, the Agreements, as worded, only waived "further republication of the notice of sale." Nothing in the Agreements indicates that the parties likewise dispensed with the reposting of the notices of sale. As there was no reposting of notice of the May 29, 1981 sale, the foreclosure fell short of the requirements of Act No. 3135. Second, we observe that the Agreements were executed and filed with the sheriff several days after each rescheduled date. As stated in the facts, the first agreement was timely filed, two days prior to the originally scheduled sale on December 5, 1980. The second agreement, however, was executed and filed eight days after the rescheduled sale on February 5, 1981. The third agreement was executed and filed ten days after the rescheduled sale on February 28, 1981. The fourth agreement was timely executed, but was filed with the sheriff one month after the rescheduled sale on March 30, 1981. On the rescheduled dates, therefore, no public sale occurred, nor was there any request to postpone filed with the sheriff, except for the first one. In short, the Agreements are clearly defective for having been belatedly executed and filed with the sheriff. The party who may be said to be at fault for this failure, and who should bear the consequences, is no other than PNB, the mortgagee in the case at bar. It is the mortgagee who causes the mortgaged property to be sold, and the date of sale is fixed upon his instruction.[33] We have held that the mortgagee's right to foreclose a mortgage must be exercised according to the clear mandate of the law. Every requirement of the law must be complied with, lest the valid exercise of the right would end.[34] PNB's inaction on the scheduled date of sale and belated filing of requests to postpone may be deemed as an abandonment of the petition to foreclose it filed with the sheriff. Consequently, its right to foreclose the mortgage based on said petition lapsed.

In a vain attempt to uphold the validity of the aforesaid waiver, petitioner asserts that the Court of Appeals should have applied Rule 39, Section 24 of the Rules of Court, which allows adjournment of execution sales by agreement of the parties. The said provision 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.[35]

Petitioner submits that the language of the abovesited provision implies that the written request of the parties suffices to authorize the sheriff to reset the sale without republication or reposting.[36]

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.[37] The cited provision in the Rules of Court hence does not apply to an extrajudicial foreclosure sale.

Moreover, even assuming that the aforecited provision applies, all it authorizes is the adjournment of the execution sale by agreement of the parties. Nowhere does it state that republication and reposting of notice for the postponed sale may be waived. Thus, it cannot, by any means, sanction the waiver in the case at bar.

Next, petitioner maintains that Julieta’s act of requesting the postponement and repeatedly signing the Agreements had placed her under estoppel, barring her from challenging the lack of publication of the auction sale.[38]

We rule otherwise. Julieta did request for the postponement of the foreclosure sale to extend the period to settle her obligation.[39] However, the records do not show that she requested the postponement without need of republication and reposting of notice of sale. In *Nepomuceno*,[40] we held:

xxx 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. xxx

In addition, we observe herein that the Agreements prepared by the counsel of PNB were in standard forms of the bank, labeled as “Legal Form No. 41.” The *Nepomuceno*[41] case likewise involved an “Agreement to Postpone Sale” that was in a ready-made form, and the only participation of respondents therein was to affix or “adhere” their signatures thereto. We therefore held that said agreement partakes of the nature of a contract of adhesion, i.e., one in which one of the contracting parties imposes a ready-made form of contract which the other party may accept or reject, but cannot modify. One party prepares the stipulation in the contract, while the other party merely affixes his signature or his “adhesion” thereto, giving no room for negotiation, and depriving the latter of the opportunity to bargain on equal footing. [42] As such, their terms are construed strictly against the party who drafted it.[43]

More importantly, the waiver being void for being contrary to the express mandate of Act No. 3135, such cannot be ratified by estoppel.[44] Estoppel cannot give validity to an act that is prohibited by law or one that is against public policy.[45] Neither can the defense of illegality be waived.[46]

Petitioner, moreover, makes much of the fact that Julieta filed her complaint with the trial court after almost two years from the May 29, 1981 auction sale, thus arguing that the delayed filing was a clear case of laches.[47]

Laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which by exercising due diligence, could or should have been done earlier.[48] In the case at bar, Julieta only realized the defect in the foreclosure sale upon conferring with her counsel who discovered the irregularity.[49] Thus, on March 25, 1983, Julieta filed her adverse claim with the Registrar of Deeds.[50] Three days after, she sent demand letters to PNB and petitioner.[51] Soon after they replied on April 6 and 7, 1983,[52] she promptly sued to nullify the foreclosure sale in the Regional Trial Court of Mandaue City on April 20, 1983.[53] She likewise filed a suit for forcible entry against petitioner in the Municipal Trial Court of Mandaue City.[54] Considering all these, we find the delay of almost two years not unreasonable. Julieta cannot be guilty of laches. Her prompt actions upon discovering her cause of action negate the claim that she has abandoned her right to claim the

properties. Besides, this defense lacks merit in light of the Civil Code stating that an action or defense for the declaration of the inexistence of a contract does not prescribe.[55]

WHEREFORE, premises considered, the Decision dated February 17, 1997 in CA-G.R. CV No. 33499 and the Resolution therein dated April 15, 1997 are AFFIRMED. No costs.

SO ORDERED.

Vitug, and Carpio, JJ., concur.

Davide, Jr., C.J., (Chairman), no part, former counsel of a party in another case.

Ynares-Santiago, J., on leave.

[1] Entitled: “Julieta M. Ouano v. Philippine National Bank and Alfredo Ouano,” rollo, pp. 20-29.

[2] RTC Records, pp. 132-136.

[3] Id., p. 6.

[4] Id., p. 191.

[5] Id., p. 192.

[6] Id., p. 133.

[7] Rollo, pp. 74-77.

[8] Id., p. 74.

[9] Id., p. 75.

[10] Id., p. 76.

[11] Id., p. 77.

[12] Id., pp. 78-79.

[13] Id., p. 199.

[14] Id., pp. 174-178.

[15] Id., pp. 185-189.

[16] RTC Records, p. 1.

[17] Id., pp. 79-84.

[18] Rollo, pp. 179-180.

[19] Id., pp. 181-184.

[20] RTC Records, pp. 454-455.

[21] Julieta Ouano died while the case was pending with the appellate court, see CA rollo, p. 52.

[22] See note 1, *supra*.

[23] Rollo, p. 40.

[24] Id., p. 165.

[25] Id., pp. 203-204.

[26] PNB v. Nepomuceno Productions Inc. et. al, G.R. No. 139479, December 27, 2002; San Jose v. CA, 225 SCRA 450 (1993); Tambunting v. CA 167 SCRA 16 (1988); Jalandoni v. Ledesma, 64 Phil. 1058, (1937).

[27] PNB v. Nepomuceno Productions Inc. et. al., supra; DBP v. Aguirre, G.R. No. 144877, September 7, 2001; Bohanan v. CA, 256 SCRA 355 (1996); Olizon v. CA. 236 SCRA 148 (1994); San Jose v. CA, supra; Masantol Rural Bank v. CA, 204 SCRA 752 (1991).

[28] Borja v. Addison, 14 Phil. 895 (1922) citing Campomanes v. Bartolome and German & Co. 38 Phil. 808 (1918).

[29] Supra.

[30] Rollo, p. 207

[31] Supra.

[32] Olizon v. CA, supra.

[33] L.F. Lang v. Prov. Sheriff of Surigao, 93 Phil. 661 (1953).

[34] Metropolitan Bank and Trust Company v. Wong, G.R. No. 120859, June 26, 2001.

[35] RULES OF COURT (1964).

[36] Rollo, p. 13.

[37] Fiestan v. CA, 185 SCRA 751 (1990).

[38] Rollo, pp. 20-21.

[39] Id., p. 42.

[40] Supra.

[41] Id.

[42] Citing Polotan, Sr., v. CA, 296 SCRA 247 (1998).

[43] Citing BPI Express Card Corp. v. Olalia, G.R. No. 131086, December 14, 2001.

[44] NEW CIVIL CODE, Art. 1409.

[45] Auyong Hian v. CA, 59 SCRA 110 (1974).

[46] See note 44, supra.

[47] Rollo, p. 219.

[48] Benito v. Saquitán-Ruiz, G.R. No. 149906, December 26, 2002 citing De Vera v. CA, 305 SCRA 624 (1999).

[49] Rollo, pp. 185-189.

[50] Id., p. 181.

[51] Id., pp. 185-189.

[52] RTC Records, p. 135.

[53] See note 16, *supra*.

[54] RTC Records, p.136.

[55] NEW CIVIL CODE, Art. 1410.

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