SPOUSES VIRGILIO G. TAMAYO, JR. AND LUCINDA F. TAMAYO, PETITIONERS, VS. HEIRS OF GAVINO DOMINGUEZ, RESPONDENTS.

G.R. NO. 133429. August 10, 2006

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This is a petition for review of the December 5, 1997 decision[1] of the Court of Appeals (CA) in CA G.R. CV No. 39583 which affirmed with modification the April 22, 1991 order[2] of the Regional Trial Court (RTC) of Antipolo, Rizal, Branch 71, in Civil Case No. 380-A.[3]

The facts follow.

To secure a P40,000 loan, Gavino Dominguez executed a real estate mortgage on one-half of his commercial property[4] in favor of the Community Savings and Loan Association[5] (CSLA) as mortgagee. The loan agreement was signed by Ricardo Dominguez[6] as co-maker and specified November 26, 1976 as due date.[7]

The mortgagor Gavino Dominguez died without settling his obligation. On maturity of the loan, CSLA filed a petition for extrajudicial foreclosure. In the auction sale, the property was awarded to it as the highest bidder.[8] The certificate of sale was registered in its name.[9] Upon the lapse of the one-year period of redemption, title and ownership of half of the property were consolidated in its favor. Tax declaration no. 6121 was issued, with CSLA and the deceased Gavino Dominguez as registered co-owners.

On September 20, 1980, CSLA allegedly gave respondents, the heirs of Gavino Dominguez, the option to repurchase within thirty days its half of the property. When they failed to avail of the offer, CSLA sold the same to petitioners Virgilio Tamayo, Jr. and Lucinda Tamayo. Tax declaration no. 046132 was issued, naming petitioner Virgilio Tamayo, Jr. and the deceased Gavino Dominguez as co-owners of the property.

On February 17, 1984, petitioners filed with the RTC of Antipolo, Rizal, Branch 71, an action for partition[10] against respondents who opposed it mainly on the ground that, since CSLA committed a violation of the mortgage deed when it failed to send Gavino Dominguez or his heirs a notice of the extrajudicial foreclosure and sale, the proceeding was null and void.

Initially,[11] the trial court ordered the partition of the property. However, acting on respondents' motion for reconsideration, [12]

> the trial court [reconsidered] its earlier decision in this case and [nullified] the extrajudicial foreclosure of the mortgage made by [CSLA] and the subsequent sale of the property to [petitioners], and [allowed respondents] to redeem said property from [CSLA] upon payment of the loan.[13]

It also ordered petitioners to pay respondents the sum of P5,000 as attorney's fees.

On appeal, the CA affirmed the RTC's revised order but deleted the award of attorney's fees since the reason therefor was not explained by the trial court. The motion for reconsideration was denied. Hence, this recourse.

The petition is denied.

The main issue before us is whether the CSLA sent a notice of the extrajudicial foreclosure and sale to the

mortgagor, deceased Gavino Dominguez, or to his heirs as required in the mortgage deed. Section 10 thereof read:

> (10) All correspondence relative to this Mortgage, including demand letters, summons, subpoenas or notification of any judicial or extra judicial actions shall be sent to the Mortgagor at the address given above or at the address that may hereafter be given in writing by the Mortgagor to the Mortgagee...[14]

"(The) question of non-compliance with notice and publication requirements of an extrajudicial foreclosure sale is a factual issue."[15]

> Settled is the rule that this Court is not a trier of facts. In the exercise of its power of review, the findings of fact of the Court of Appeals are conclusive and binding and consequently, it is not our function to analyze or weigh evidence all over again.[16]

We adopt the CA's finding that CSLA violated the notice requirement in the mortgage deed. As held by the appellate court:

> Indeed, as correctly found by the lower court, there is no evidence in this case to show that the [CSLA] properly sent notice of the foreclosure proceedings to deceased mortgagor Gavino Dominguez or to his heirs, pursuant to Section 10 of the Real Estate Mortgage Contract. We cannot submit to [petitioners'] reliance on "Exhibit I", the alleged notice of foreclosure proceedings sent to deceased Gavino Dominguez, inasmuch as there is no showing that in the "blank" return card of said letter [,] the same was properly received by deceased Gavino Dominguez or by his heirs or by any duly authorized person.[17]

In extrajudicial foreclosure proceedings, personal notice to the mortgagor is actually unnecessary unless stipulated.[18] In this case, the parties voluntarily agreed on an additional stipulation embodied in Section 10 of the mortgage deed. Not being contrary to law, morals, good customs and public policy, CSLA should have complied with it faithfully.

Lastly, we agree that the award of attorney's fees in favor of respondents was not proper because it was discussed only in the dispositive portion of the decision.

> The accepted rule is that the reason for the award of attorney's fees must be stated in the text of the court's decision; otherwise, if it is stated only in the dispositive portion of the decision, the same shall be disallowed on appeal. The award of attorney's fees being an exception rather than the general rule, it is necessary for the court to make findings of facts and law that would bring the case within the exception and justify the grant of such award.[19]

WHEREFORE, the petition is hereby DENIED. The decision of the Court of Appeals dated December 5, 1997 is hereby AFFIRMED.

Costs against petitioners.
SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Azcuna and Garcia, JJ., concur.

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[1] Penned by Associate Justice Rodrigo Cosico and concurred in by Associate Justices Salome Montoya (retired) and Delilah Vidallon-Magtolis (retired) of the Ninth Division of the Court of Appeals; rollo, pp. 6-12.

[2] Penned by Judge Felix Caballes, id., pp. 88-94 and 96.

[3] Entitled Spouses Virgilio Tamayo, Jr. and Lucinda Tamayo v. Heirs of Gavino Dominguez.

[4] Described as, "One parcel of commercial land at the corner of Rizal Ave. and B. Pag-asa St., Taytay, Rizal,

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bounded on the North by B. Pag-asa St., on the East by Rizal Ave., on the South by Gervacio Bunyi and on the West by Joven Esguerra, with an area of 243 sq. m. xxx." Per RTC decision dated December 11, 1990, rollo, p. 69.

[5] Formerly known as Taytay Savings and Loan Association.

[6] One of herein respondents.

[7] The loan was executed on November 25, 1975, per CA decision, id., p. 7.

[8] Auction sale was held on October 10, 1977.

[9] Register of Deeds of Rizal, September 7, 1979.

[10] Docketed as Civil Case No. 380-A , rollo, pp. 27-29.

[11] Decision penned by Judge Patricio Patajo, dated December 11, 1990, id., pp. 69-77.

[12] Order dated April 22, 1991, penned by Judge Felix Caballes, id., pp. 88-94 and 96.

[13] Per CA decision, id., p. 9.

[14] Id., pp. 53-54.

[15] Community Savings and Loan Association, Inc. v. Court of Appeals, No. L-75786, 31 August 1987, 153 SCRA 564.

[16] Gabriel v. Mabanta, 447 Phil. 717 (2003).

[17] Rollo, p. 10.

[18] Resolution of the Supreme Court Third Division dated April 27, 2005 on Yson v. Philtrust Bank, G.R. No. 166969.

[19] Agustin v. Court of Appeals, G.R. No. 84751, 06 June 1990, 186 SCRA 375.

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