

PHILIPPINE NATIONAL BANK, PETITIONER, VS. SPOUSES FRANCISCO AND MERCED RABAT, RESPONDENTS.

G.R. No. 134406. November 15, 2000

Ponente: DAVIDE JR., C.J.

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DAVIDE JR., C.J.:

In its petition for review, petitioner Philippine National Bank (hereafter PNB) seeks the reversal of the decision of 29 July 1998 of the Court of Appeals in CA-GR. CV No. 49800,[1] which affirmed the decision of 14 June 1994 of the Regional Trial Court of Manila, Branch 14, in Civil Case No. 92-61122.[2]

The factual and procedural antecedents which gave rise to this appeal are hereunder summarized.

On 25 August 1979, respondent spouses Francisco and Merced Rabat (hereafter RABATs) applied for a loan with PNB.[3] Subsequently, the RABATs were granted on 14 January 1980 a medium-term loan of P4.0 Million to mature three years from the date of implementation.[4]

On 28 January 1980, the RABATs signed a Credit Agreement and executed a Real Estate Mortgage[5] over twelve (12) parcels of land which stipulated that the loan would be subject to interest at the rate of 17% per annum, plus the appropriate service charge and penalty charge of 3% per annum on any amount remaining unpaid or not renewed when due.[6]

On 25 September 1980, the RABATs executed another document denominated as "Amendment to the Credit Agreement" purposely to increase the interest rate from 17% to 21% per annum, inclusive of service charge and a penalty charge of 3% per annum to be imposed on any amount remaining unpaid or not renewed when due.[7] They also executed another Real Estate Mortgage[8] over nine (9) parcels of land as additional security for their medium-term loan of Four Million (P4.0 M).[9] These parcels of land are agricultural, commercial and residential lots situated in Mati, Davao Oriental.

The several availments of the loan accommodation on various dates by the RABATs reached the aggregate amount of THREE MILLION FIVE HUNDRED SEVENTEEN THOUSAND THREE HUNDRED EIGHTY (P3,517,380), as evidenced by the several promissory notes,[10] all of which were due on 14 March 1983.

The RABATs failed to pay their outstanding balance on due date.

In its letter[11] of 24 July 1986, in response to the letter of the RABATs of 16 June 1986 requesting for more time within which to arrive at a viable proposal for the settlement of their account, PNB informed the RABATs that their request has been denied and gave the RABATs until 30 August 1986 to settle their account. The PNB sent the letter to 197 Wilson Street, San Juan, Metro Manila.

For failure of the RABATs to pay their obligation, the PNB filed a petition for the extrajudicial foreclosure of the real estate mortgage executed by the RABATs. After due notice and publication, the mortgaged parcels of land were sold at a public auction held on 20 February 1987 and 14 April 1987. The PNB was the lone and highest

bidder with a bid of P3,874,800.00.[12]

As the proceeds of the public auction were not enough to satisfy the entire obligation of the RABATs, the PNB sent anew demand letters. The letter dated 15 November 1990[13] was sent to the RABATs at 197 Wilson Street, San Juan, Metro Manila; while another dated 30 August 1991[14] was sent to the RABATs at 197 Wilson Street, Greenhills, San Juan, Metro Manila, and also in Mati, Davao Oriental.

Upon failure of the RABATs to comply with the demand to settle their remaining outstanding obligation which then stood at P14,745,398.25,[15] including interest, penalties and other charges, PNB eventually filed on 5 May 1992 a complaint for a sum of money before the Regional Trial Court of Manila. The case was docketed as Civil Case No. 92-61122, which was assigned to Branch 14 thereof.

The RABATs filed their answer with counterclaim[16] on 28 July 1992 to which PNB filed its Reply and Answer to Counterclaim.[17] On 2 January 1993, the RABATs filed an amended answer.[18] The RABATs admitted their loan availments from PNB and their default in the payment thereof. However, they assailed the validity of the auction sales for want of notice to them before and after the foreclosure sales.

They further added that as residents of Mati, Davao Oriental since 1970 up to the present, they never received any notice nor heard about the foreclosure proceeding in spite of the claim of PNB that the foreclosure proceeding had been duly published in the San Pedro Times, which is not a newspaper of general circulation.

The RABATs likewise averred that the bid price was grossly inadequate and unconscionable.

Lastly, the RABATs attacked the validity of the accumulated interest and penalty charges because since their properties were sold in 1987, and yet PNB waited until 1992 before filing the case. Consequently, the RABATs contended that they should not be made to suffer for the interest and penalty charges from May 1987 up to the present. Otherwise, PNB would be allowed to profit from its questionable scheme.

The PNB filed on 5 February 1993 its Reply to the Amended Answer and Answer to Counterclaim.[19]

After appropriate proceedings, the trial court rendered on 14 June 1994 a decision,[20] whose dispositive portion reads as follows:

WHEREFORE, and in view of the foregoing considerations, judgment is hereby rendered dismissing the complaint.

On the counterclaim, the two (2) auction sales of the mortgaged properties are hereby set aside and ordering the plaintiff to reconvey to the defendants the remaining properties after the sale [of] sufficient properties for the satisfaction of the obligation of the defendants.

The parties will bear their respective cost.

So ordered.

The trial court addressed these five issues:

- The validity of the foreclosure proceedings;
- The validity of the auction sales;
- The validity of the penalty charges and the interest charged by the plaintiff;
- Whether or not the defendants should be liable for the interests and penalty charges from the date of the auction sales up to the filing of this case; and

- Whether or not the plaintiff is entitled to deficiency judgment.

The first issue was resolved against the RABATs who claimed that the foreclosure was void due to lack of notice to them at their address in Mati, Davao Oriental, and that there was no publication of the notice in a newspaper of general circulation. It held that the mortgage contract did not specifically require that personal service of notice of foreclosure sale be given to them and that the San Pedro Times which published the notice of foreclosure sale is a newspaper of general circulation as certified by the Sheriff and as shown in the affidavit of its publisher.

Nevertheless, the trial court agreed with the RABATs that the two auction sales were void in view of the gross inadequacy of the price, which is shocking to the conscience. It ratiocinated thus:

Certainly, the price of P6.00/sq.m. for the properties sold in the first auction sale and P3.00/sq.m. for the properties sold in the second auction sale are too low as compared with P80.00 which according to Atty. Sibala was the price per square meter of the properties in 1986.

The evidence show that the foreclosed propert[ies] are near the Municipal building, public market, provincial capital of Davao Oriental, the provincial hospital of Davao Oriental, and the Sibala Village Subdivision wherein the last sold at P200.00 per square meter. The prices paid for are indeed too low as [to] be shocking to the conscience.

On the third and fourth issue, the trial court ruled:

... although the movant's properties were sold in 1987, the plaintiff waited until 1992 before filing this case, hence, the tremendous accumulation of interest and penalty charges. The plaintiff has not given any plausible explanation for the delay, hence, it may be presumed that the plaintiff had deliberately delayed the filing of this case in order that it can collect more interest and penalty charges. Consequently, the defendants should not be made to suffer for the interest and penalty charges from May 1987 up to the present. Otherwise, the plaintiff would be allowed to profit from its questionable scheme. Therefore, the defendants should not only be made to answer for their loan in the amount of P4,000,000.00 plus interest up to May 1987.

The defendants further claim that the interest and penalty charges should be 21% and 3% respectively pursuant to the provision of the amended credit accommodation; that the acceleration close should not be enforced as it is in nature of a contract of adhesion. The amendment to the credit accommodation is not a contract of adhesion. A contract of adhesion is one solely prepared by one of the parties where the other party had no participation, but merely gives his asset [sic] by adhering thereto. It is a take it or leave it situation. Standardized contract form offered to consumers of goods and services on essentially (take it or leave it) basis without affording consumer realistic opportunity to bargain and under such conditions that consumers cannot obtain desired products or services except by acquiescing in form contract. Distinctive feature of adhesion contract is that weaker party has no realistic choice up to its term. (Cubic Corporation versus Marty, Dist., 185 C.A. 3d 438-229 Cal/Rptr. 828, 833; Standard Oil Co. of California versus Perkins, C.A. Or. 347 F. 2d 379, 383.).

Anent the last issue, the trial court ruled that while a mortgagee is entitled to a deficiency judgment, it would be premature to adjudge it in the case since the two auction sales in question are null and void.

Only PNB appealed from the judgment to the Court of Appeals. Its appeal was docketed as CA-G.R. CV No. 49800.

In its Appellant's Brief filed in CA-G.R. CV No. 49800, PNB raised the following issues:[21]

I

WHETHER OR NOT THE TRIAL COURT ERRED IN NULLIFYING THE SHERIFF'S AUCTION SALE ON THE GROUND THAT THE PNB'S WINNING BID IS VERY LOW

II

WHETHER OR NOT THE TRIAL COURT ERRED IN RULING THAT THE DEFENDANTS-APPELLEES ARE NOT LIABLE TO PAY INTEREST AND PENALTY CHARGES AFTER THE AUCTION SALES UP TO THE FILING OF THIS CASE.

In their Appellees' Brief,[22] the RABATs prayed for the appellate court to affirm in toto the decision of the trial court.

On 29 June 1998, the Court of Appeals rendered a decision[23] affirming the trial court's ruling nullifying the auction sales, but on a different ground.

The Court of Appeals discovered that the RABATs did not actually receive personal notices concerning the foreclosure proceedings. Hence, they could not have known of said foreclosure sales. It pronounced and decreed, thus:

An examination of the exhibits show that the defendant-appellees given address is Mati, Davao Oriental and not 197 Wilson Street, Greenhills, San Juan, Metro Manila as alleged by the plaintiff-appellant (Exhibit C to J, pp. 208, 217, 220, 229, 236-239, Records). Records further show that all subsequent communications by plaintiff-appellant was sent to defendant-appellees address at Wilson Street, Greenhills, San Juan. This was the very reason why defendant-appellees were not aware of the foreclosure proceedings.

As correctly found out by the trial court, there is a need for the setting aside of the two (2) auction sales hence, there is yet no deficiency judgment to speak of.

WHEREFORE, the decision of the trial court dated 14 June 1994, is hereby affirmed in toto.

SO ORDERED.

Unsatisfied with the decision, the PNB seasonably filed before us the present petition raising the lone issue of:

WHETHER OR NOT THE COURT OF APPEALS MAY REVIEW AND PASS UPON THE TRIAL COURT'S FINDING AND CONCLUSION ON AN ISSUE WHICH WAS NEVER RAISED ON APPEAL, AND, THEREFORE, HAD ATTAINED FINALITY

In support thereof, PNB argues:

1. THE COURT OF APPEALS HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT DECIDED AND RESOLVED A QUESTION/OR ISSUE NOT RAISED IN PETITIONER PNB'S APPEAL;
2. THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT REVERSED THE FINDING AND CONCLUSION OF THE TRIAL COURT ON AN ISSUE WHICH HAD ALREADY ATTAINED FINALITY.

PNB maintains that pursuant to Section 8 of Rule 51 of the 1997 Rules of Civil Procedure no error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued on the Brief, save as the court may pass upon plain errors and clerical errors.

PNB adds that nowhere in its Appellant's Brief did it raise the issue of "lack of notice" to the RABATs. Such being the case, in addition to the fact that the RABATs did not appeal from the decision, the trial court's rejection of the RABATs' claim of lack of personal notice regarding the foreclosure proceedings had already attained finality. The RABATs can no longer obtain from the appellate court any affirmative relief other than the ones

granted in the decision of the court below.

PNB concludes that the Court of Appeals committed grave abuse of discretion amounting to lack of jurisdiction when it resolved an issue which was not raised in the appeal and the ruling on which by the trial court had already become final.

In their Comment filed on 18 November 1998, the RABATs assert that the petition is "procedurally defective, presents no justiciable question and categorically frivolous." They point out that while the petition is designated as one under Rule 45 of the 1997 Rules of Civil Procedure, yet it is predicated on grounds involving question of law and lack or excess of jurisdiction, under Rule 65. The PNB cannot be allowed to avail simultaneously of both remedies.

Anent the want of justiciable question, the RABATs maintain that this case involves the simple and fundamental issue of the validity of the auction sales conducted by PNB, which hinges on compliance "with the requirements set forth under Republic Act (sic) 3135, governing extrajudicial foreclosure, as amended by Republic Act No. 4148 (publication, posting and notices) and the reasonableness of the bid price," which should be "considered jointly for a judicious resolution of the ... controversy/issue."

Consequently, the RABATs conclude that the Court of Appeals cannot be faulted for ruling on a material fact whose consideration is essential to a complete determination of the rights and obligations of the parties.

On 16 March 1999, the PNB filed its Reply to the Comment of the RABATs.

In our resolution of 21 April 1999 we gave due course to the petition and required the parties to submit their respective memoranda which they complied with.

Section 8, Rule 51 of the 1997 Rules of Civil Procedure expressly provides:

SEC. 8. Questions that may be decided. -- No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court pass upon plain errors and clerical errors.

In his book,[24] Mr. Justice Florenz D. Regalado commented on this section, thus:

1. Sec. 8, which is an amendment of the former Sec. 7 of this Rule, now includes some substantial changes in the rules on assignment of errors. The basic procedural rule is that only errors claimed and assigned by a party will be considered by the court, except errors affecting its jurisdiction over the subject matter. To this exception has now been added errors affecting the validity of the judgment appealed from or the proceedings therein.

Also, even if the error complained of by a party is not expressly stated in his assignment of errors but the same is closely related to or dependent on an assigned error and properly argued in his brief, such error may now be considered by the court. These changes are of jurisprudential origin.

2. The procedure in the Supreme Court being generally the same as that in the Court of Appeals, unless otherwise indicated (see Secs. 2 and 4, Rule 56), it has been held that the latter is clothed with ample authority to review matters, even if they are not assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a just decision of the case. Also, an unassigned error closely related to an error properly assigned (PCIB vs. CA, et al., L-34931, Mar. 18, 1988), or upon which the determination of the question raised by error properly assigned is dependent, will be considered by the appellate court notwithstanding the failure to assign it as error (Ortigas, Jr. vs. Lufthansa German Airlines, L-28773, June 30, 1975; Soco vs. Militante, et al., G.R. No. 58961, June 28, 1983).

It may also be observed that under Sec. 8 of this Rule, the appellate court is authorized to consider a plain error, although it was not specifically assigned by the appellant (*Dilag vs. Heirs of Resurreccion*, 76 Phil. 649), otherwise it would be sacrificing substance for technicalities.

It may at once be noticed that the exceptions are for the benefit of the appellant and not for the appellee.

The RABATs did not appeal from the decision of the trial court. As a matter of fact, in their Appellee's Brief filed with the Court of Appeals they prayed that said decision be affirmed in toto. As against the RABATs the trial court's findings of fact and conclusion are already settled and final. More specifically, they are deemed to have unqualifiedly agreed with the trial court that the foreclosure proceedings were valid in all respects, except as to the bid price.

On the other hand, PNB, the sole appellant, never raised the issue of lack of personal notice to the RABATs. Neither is such issue closely related to or dependent on PNB's assigned error on appeal nor is it an exception to Section 8 of Rule 51.

Needless to stress, the Court of Appeals erred in resolving PNB's appeal on the basis of an issue which was not raised on appeal and whose resolution thereon by the trial court has long become firm and final against the party adversely affected by the resolution.

Even granting *arguendo* that the issue of personal notice may be raised, still we cannot agree with the Court of Appeals. In the first place, in extrajudicial foreclosure sales, personal notice to the mortgagor is not necessary.[25] Section 3 of Act No. 3135 reads:

Section 3. Notice shall be given by posting 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 be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city.

Clearly personal notice to the mortgagor is not required. Second, the requirements of posting and publication in a newspaper of general circulation were duly complied with by the PNB as correctly found by the trial court, to which we accord great respect. A question of non-compliance with the notice and publication requirements of an extrajudicial foreclosure sale is a factual issue and the resolution thereof by the trial court is binding and conclusive upon us absent any showing of grave abuse of discretion.[26]

WHEREFORE, the petition is GRANTED. The decision of the Court of Appeals of 29 July 1998 in CA-G.R. CV No. 49800 is hereby SET ASIDE. The Court of Appeals is directed to DECIDE, with reasonable dispatch, CA-G.R. CV No. 49800 on the basis of the errors raised by petitioner Philippine National Bank in its Appellant's Brief.

No pronouncement as to costs.

Puno, Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

[1] Rollo, 23-28; CA Rollo in CA-G.R. CV No. 49800, 85-90, Per Rivera, C., J., with the concurrence of Salas, B. and Villarama, M., JJ.

[2] Original Record (OR), Civil Case No. 92-61122, 420-427. Per Judge Inocencio Maliaman.

[3] Exhibit "A," OR, 205.

[4] Exhibit "B," *Id.*, 207.

[5] Exhibits "E," "E-1" to "E-8," Id., 220-228.

[6] Exhibit "C," "C-1," and "C-2," Id., 208-210.

[7] Exhibit "D," "D-1," Id., 217-218.

[8] Exhibits "F," "F-1" to "F-6," Id., 229-235.

[9] Supra note 8.

[10] Exhibits "G," "H," "I," and "J"; OR, 236-239.

[11] Exhibits "Q," "Q-1" and "Q-2," OR, 240.

[12] Exhibit "K-K4," Id., 242-246, Exhibit "L - L2," Id., 247-249.

[13] Exhibit "N"; 253.

[14] Exhibits "O," "O-1" and "O-2," Id., 254-255.

[15] Exhibit "M" to "M-2," OR, 250-252.

[16] OR, 62-67.

[17] Id., 79-82.

[18] OR, 116-126.

[19] Id., 168-169.

[20] Supra note 2.

[21] CA Rollo, 24-35.

[22] CA Rollo, 56-79.

[23] Supra note 1.

[24] Remedial Law Compendium, vol I (Sixth Revised Edition, 1997), 582-583.

[25] Olizon v. Court of Appeals, 236 SCRA 148 [1994]; Gravina v. CA, 220 SCRA 178 [1993]; Cortes v. IAC, 175 SCRA 545 [1989].

[26] Sulit v. Court of Appeals, 268 SCRA 441, 456 [1997], citing Community Savings and Loans Association, Inc. v. Court of Appeals, 153 SCRA 564 [1987].

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