

ELSA TAGUNICAR AND EMERSON TAGUNICAR, PETITIONERS, VS. LORNA EXPRESS CREDIT CORP., RESPONDENT.

G.R. NO. 138592. February 28, 2006

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Before us is a petition for review on certiorari[1] assailing the Decision[2] dated November 11, 1998 and Resolution[3] dated May 4, 1999 rendered by the Court of Appeals in CA-G.R. SP No. 46378, entitled "Elsa Tagunicar and Emerson Tagunicar vs. Hon. Santiago G. Estrella, in his capacity as Presiding Judge of the Regional Trial Court of Pasig City, Branch 68, Lorna Express Credit Corp., and Carlos G. Maog, as Sheriff IV, RTC, Pasig City, Metro Manila."

The factual antecedents as borne by the records are:

On October 19, 1994, spouses Elsa and Emerson Tagunicar, petitioners, obtained a loan of P60,000.00 from Lorna Express Credit Corporation, respondent. As security, they executed a deed of mortgage over their two unregistered lots with improvements - Lot 14 and Lot 16, Block 175, Zone 4, Upper Bicutan, Taguig, Metro Manila. When petitioners failed to pay the stipulated monthly installment, they proposed to respondent corporation a restructuring scheme to which the latter agreed.

Subsequently, petitioners offered to pay respondent P100,000.00 in cash corresponding to their loan and accrued interest. However, respondent refused to accept the amount. Instead, it filed with the Regional Trial Court (RTC) of Makati City a complaint for sum of money amounting to P223,057.34 (representing the principal and interests) against petitioners, docketed as Civil Case No. 96-777. On August 7, 1997, the RTC issued an Order dismissing the complaint for respondent's failure to prosecute.

Meantime, due to the inability of petitioners to pay their loan (now amounting to P740,254.87), respondent, through its counsel, filed with the Office of the Sheriff of Taguig, Metro Manila an application for extra judicial foreclosure under Act No. 3135, as amended.

On September 29, 1997, the Notice of Auction Sale was issued by the Office of Notary Public Wilfredo T. Albarico of Pasig City. It was (1) posted at three public places in the municipalities of Taguig and Pasig; and (2) published in *Bongga* once a week for three consecutive weeks (October 4, 11 and 18, 1997), setting the auction sale of the mortgaged property on October 24, 1997 at ten o'clock in the morning at the main entrance of the Taguig Municipal Hall.

Immediately, petitioners filed with the RTC, Branch 68, Pasig City, a petition for prohibition with prayer for issuance of a temporary restraining order and a writ of preliminary injunction, docketed as Civil Case No. SCA-1501. They sought to enjoin Notary Public Wilfredo Albarico and Sheriff Carlos G. Maog, also a respondent, from proceeding with the auction sale, alleging that the notice was not published in a newspaper of general circulation, and that the said auction sale was set, not after the third publication, but only after the first publication, in violation of Section 3 of Act No. 3135, as amended.[4]

Acting thereon, the RTC, in an Order dated November 5, 1997, issued a temporary restraining order.

Thereafter or on November 20, 1997, the petition for issuance of a writ of preliminary injunction was set for hearing. On the same day, the RTC rendered a Decision denying the petition for prohibition.

Petitioners then filed a motion for reconsideration but was denied by the RTC in its Resolution dated December 8, 1997. This prompted petitioners to file with the Court of Appeals a petition for review assailing the Decision dated November 20, 1997 upholding the validity of the extra judicial foreclosure sale.

On November 11, 1998, the Appellate Court rendered its Decision denying the petition and affirming the trial court's finding that the notice of auction sale complied with the publication requirement under Section 3 of Article 3135, as amended. The same court also held that Bongga which published the notice is a newspaper of general circulation.

Petitioners filed a motion for reconsideration but it was denied by the Court of Appeals in its Resolution dated May 4, 1999.

Hence, the instant petition for review on certiorari imputing to the Court of Appeals the followings errors:

I

THE COURT OF APPEALS ERRED IN HOLDING THAT THE TWENTY (20) DAY PERIOD FOR THE CONDUCT OF THE AUCTION SALE SHOULD BE COUNTED FROM THE DATE THE NOTICES WERE POSTED IN THE THREE (3) CONSPICUOUS PUBLIC PLACES AND NOT FROM THE DATE OF THE LAST PUBLICATION.

II

THE COURT OF APPEALS ERRED IN IGNORING AND DISREGARDING THE ARGUMENTS OF PETITIONERS THAT THE LAW APPLICABLE FOR EXTRAJUDICIAL FORECLOSURE OF A MORTGAGE AND AUCTION SALE IS THE SUPREME COURT ADMINISTRATIVE ORDER NO. 3, AND THUS, THE FORECLOSURE PROCEEDINGS BEFORE A NOTARY PUBLIC IS NULL AND VOID.

Anent the first assigned error, petitioners contend that the foreclosure sale of the mortgaged property is void since it was conducted on October 24, 1997, or after the first publication on October 4, 1997. They insist that the said auction sale should have been done after the third publication on October 18, 1997.

We disagree.

Section 3, Act No. 3135, as amended, provides:

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

The language of the above law is clear, explicit and unequivocal. It admits no room for interpretation. This is a basic legal precept.

Records show that the notice of auction sale was posted in three public places in the Municipality of Taguig and Pasig City. The said notice was published once a week for three consecutive weeks or on October 4, 11 and 18, 1997 in Bongga, a newspaper of general circulation.[5] Thus, the mandatory requirements of notice and publication were complied with.

Now, going to the second assigned error, petitioners argue that an auction sale conducted by a Notary Public is void, citing Supreme Court Administrative Order No. 3, Series of 1984.[6]

Petitioners' argument is bereft of merit.

Section 4 of Act No. 3135, as amended, provides:

Sec. 4. The sale shall be made at public auction, between the hours of nine in the morning and four in the afternoon; and shall be under the direction of the sheriff of the province, the justice or auxiliary justice of the peace (now municipal or auxiliary municipal judge) of the municipality in which such sale has to be made, or a notary public of said municipality, who shall be entitled to collect a fee of five pesos for each day of actual work performed, in addition to his expenses. (Underscoring ours)

Similarly, Administrative Matter No. 99-10-05-0 issued by this Court sets forth the procedure in extrajudicial foreclosure of mortgage, thus:

- All applications for extrajudicial foreclosure of mortgage whether under the direction of the sheriff or a notary public, pursuant to Act 3135, as amended by Act 4118, and Act 1508, as amended, shall be filed with the Executive Judge, through the Clerk of Court, who is also the Ex-Officio Sheriff.

- Upon receipt of an application for extrajudicial foreclosure of mortgage, it shall be the duty of the Clerk of Court to:

x x x x x

c)

examine, in case of real estate mortgage foreclosure, whether the applicant has complied with all the requirements before the public auction is conducted under the direction of the sheriff or a notary public, pursuant to Sec. 4 of Act 3135, as amended;

x x x x x.

(Underscoring ours)

Clearly, the Notary Public is authorized to direct or conduct a public auction.

WHEREFORE, the petition is DENIED. The assailed Decision dated November 11, 1998 and Resolution dated May 4, 1999 of the Court of Appeals in CA-G.R. SP No. 46378 are AFFIRMED. Costs against petitioners. SO ORDERED.

Puno, (Chairman), Azcuna and Garcia, JJ., concur.

Corona, J., On leave

[1]Pursuant to Rule 45 of the 1997 Rules of Civil Procedure, as amended.

[2] Penned by Justice Buenaventura J. Guerrero (retired), and concurred in by Justice Portia Aliño-Hormachuelos and Justice Presbitero J. Velasco, Jr. (now Court Administrator), Annex "A" of the Petition, Rollo, pp. 34-40.

[3] Annex "B," id., p. 41.

[4[] Which provides:

Section 3. Notice of sale; posting; when publication required. – Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is

situated, and if such property is worth more than four hundred pesos, such notices shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city.

[5] Rollo, p. 65.

[6] Administrative Order No. 3

TO: ALL EXECUTIVE JUDGES AND CLERKS OF COURT OF THE REGIONAL TRIAL COURTS

SUBJECT: Procedure in Extrajudicial Foreclosure of Mortgage

x x x x x

- All applications for extrajudicial foreclosure of mortgage under Act 3135, as amended by Act 4118, and Act 1508, as amended, shall be filed with the Executive Judge, through the Clerk of Court who is also the Ex-Oficio Sheriff;

- Upon receipt of an application for extrajudicial foreclosure of mortgage, it shall be the duty of the Office of the Sheriff to:

a)

receive and docket said application and to stamp the same with the corresponding file number and date of filing;

b)

collect the filing fees therefor and issue the corresponding official receipt;

c)

examine, in case of real estate mortgage foreclosure, whether the applicant has complied with all the requirements before the public auction is conducted under its direction or under the direction of a notary public, pursuant to Section 4 of Act 3135, as amended;

x x x x x.

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