

GUILLERMINA BALUYUT, PETITIONER, VS. EULOGIO POBLETE, SALUD POBLETE AND THE HON.COURT OF APPEALS, RESPONDENTS.*G.R. No. 144435. February 06, 2007*

Ponente: AUSTRIA-MARTINEZ, J.

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Before the Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court seeking to reverse the Decision[1] of the Court of Appeals (CA) dated December 21, 1999 and its Resolution[2] of August 4, 2000 in CA-G.R. CV No. 51534. The assailed CA Decision affirmed the Decision of the Regional Trial Court (RTC) of Pasig, Branch 167 which dismissed herein petitioner's Complaint in Civil Case No. 52268, while the questioned Resolution denied petitioner's Motion for Reconsideration.

The facts of the case are as follows:

On July 20, 1981, herein petitioner, Guillermina Baluyut (Baluyut), loaned from the spouses Eulogio and Salud Poblete the sum of P850,000.00. As evidence of her indebtedness, Baluyut signed, on even date, a promissory note for the amount borrowed[3]. Under the promissory note, the loan shall mature in one month. To secure the payment of her obligation, she conveyed to the Poblete spouses, by way of a real estate mortgage contract, a house and lot she owns, covered by Transfer Certificate of Title (TCT) No. 137129 and located in Barrio Mapuntod, then Municipality of Mandaluyong, Province of Rizal.[4] Upon maturity of the loan, Baluyut failed to pay her indebtedness. The Poblete spouses subsequently decided to extrajudicially foreclose the real estate mortgage. On August 27, 1982, the mortgaged property was sold on auction by the Provincial Sheriff of Rizal to the Poblete spouses who were the highest bidders, as evidenced by a Certificate of Sale issued pursuant thereto.[5] Baluyut failed to redeem the subject property within the period required by law prompting Eulogio Poblete to execute an Affidavit of Consolidation of Title.[6] Subsequently, TCT No. 43445 was issued in the name of Eulogio and the heirs of Salud, who in the meantime, died.[7] However, Baluyut remained in possession of the subject property and refused to vacate the same. Hence, Eulogio and the heirs of Salud filed a Petition for the issuance of a writ of possession with the RTC of Pasig. The case was docketed as Case No. R-3457. Subsequently, the trial court issued an order granting the writ of possession. However, before Eulogio and the heirs of Salud could take possession of the property, Baluyut filed an action for annulment of mortgage, extrajudicial foreclosure and sale of the subject property, as well as cancellation of the title issued in the name of Eulogio and the heirs of Salud, plus damages. The case was docketed as Civil Case No. 52268 and was subsequently consolidated with Case No. R-3457. In the meantime, Eulogio died and was substituted by his heirs. After trial on the merits, the trial court issued a Decision on September 13, 1995 dismissing Baluyut's complaint.[8]

Aggrieved by the trial court's Decision, herein petitioner filed an appeal with the CA.

On December 21, 1999, the CA promulgated the presently assailed Decision affirming the judgment of the trial court.[9]

Petitioner filed a Motion for Reconsideration but the same was denied in a Resolution issued by the CA on August 4, 2000.[10]

Hence, the present petition with the following assignment of errors:

I

The decision and the resolution are both palpably infirm in holding that no prior demand to pay is necessary for a loan to mature when there is conflict between the date of maturity of the loan as stated in the Deed of Real Estate Mortgage and the Promissory Note on the one hand and the real date of its maturity on the other.

II

The decision and the resolution are both palpably infirm in holding that the sheriff who conducted the foreclosure proceedings should be presumed to have regularly performed his duty in conducting the foreclosure proceedings despite the inability of the Office of the Provincial Sheriff who had been ordered by the trial court to produce the records of the foreclosure in question and show that there was compliance with the required posting of notices in three public places and with the required publication for three consecutive weeks in a newspaper of general circulation.

III

That the Decision and Resolution are legally infirm in holding that because the Petitioner-Appellant failed to invoke her right to be sent an Assessment Notice by the highest bidder thirty days before the expiration of the right of legal redemption during the trial and on appeal, it should be deemed that she had waived her right to this benefit under the law despite a clear showing that the said mandatory requirement should have been strictly observed before title could be consolidated in favor of the highest bidder as provided for in the certificate of sale issued by the sheriff.[11]

In her first assigned error, petitioner contends that herein private respondents' witness, a certain Atty. Edwina Mendoza, is a competent witness and that her testimony, that the maturity of the loan is one year, is acceptable proof of the existence of collateral agreements which were entered into by the parties who executed the Promissory Note and the Real Estate Mortgage prior, contemporaneous and subsequent to the execution of these documents. Petitioner also argues that the issue of the real date of the maturity of the loan can be settled only by a formal letter of demand indicating the sum due and the specific date of payment which is the duty of the private respondents to give; that absent said letter of demand, the loan may not be considered to have matured; that, as a consequence, the property given as a collateral may not be foreclosed and the subsequent consolidation of title over the subject property should be annulled. Petitioner further contends that even if the issue on the term of the loan was first brought up in petitioner's Addendum to the Motion for Reconsideration filed with the CA, the appellate court may still properly consider this issue in the interest of justice and equity considering that this is a matter of record and has some bearing on the other issues submitted for resolution.

Anent her second assignment of error, petitioner contends that the CA erred in relying on the rule on presumption of regularity in the sheriff's performance of his duties relative to the foreclosure of the questioned property absent any evidence presented by petitioner to prove that the sheriff failed to comply with the legal requirements in the sale of the foreclosed properties. Petitioner argues that under the law, the sheriff is required to submit an Affidavit of Posting of Notices to the clerk of court and to the judge before he is allowed to schedule an auction sale. However, per letter from the Office of the Clerk of Court, there are no records of the foreclosure proceedings involving the subject property. Based on this premise, petitioner concludes that since the existence of these documents is supposed to be in the custody of the sheriff's office and that the private respondents are supposed to have copies of these documents, being the ones who prosecuted the foreclosure proceedings, petitioner's

contention that there was non-compliance with the legal requirements for the validity of the foreclosure proceedings partakes of a negative allegation which she need not prove. Petitioner argues that in the absence of documents evidencing the foreclosure proceedings over the subject property, the lower court should have acted judiciously by annulling the foreclosure and ordering the repeat of the proceedings.

As to her third assigned error, petitioner asserts that despite the fact that she is entitled under the law to an Assessment Notice or Notice of Redemption coming from the highest bidder 30 days before the expiration of the period to redeem apprising her of the principal amount, the interest, taxes and other lawful fees due in case she opts to exercise her right of redemption, she did not receive any notice of this kind. Petitioner contends that her right to this notice is not subject to waiver and that her failure to invoke the same during trial and on appeal does not preclude her from invoking such right in her motion for reconsideration filed with the CA and in the present petition.

In their Motion to Dismiss, which the Court treated as their comment on the petition, private respondents contend that the petition should be dismissed on the ground that no question of law was raised therein. Private respondents argue that the issue as to the supposed conflict between the date of maturity of the loan as stated in the Deed of Real Estate Mortgage and the Promissory Note, on one hand, and the real date of maturity as agreed upon by the parties, on the other, as well as the question of whether or not the sheriff who conducted the foreclosure proceedings involving the subject property complied with the legal requirements of posting and publication are questions of fact which are not proper subjects of a petition for review on certiorari. Furthermore, private respondents also assert in their Memorandum that the questions of fact being raised by petitioner had already been ruled upon by the RTC and the CA in favor of private respondents; that the findings of fact of the RTC and the CA are binding on this Court.

The Court finds the petition without merit.

Petitioner admits that the issue regarding the date of maturity of the loan which she incurred from the Poblete spouses was first brought up only in her Addendum to the Motion for Reconsideration filed before the CA. In an effort to clothe her argument with merit, petitioner contends that the CA should have properly considered this issue in the interest of justice and equity. The Court is not persuaded. It is settled that an issue not raised during trial could not be raised for the first time on appeal as to do so would be offensive to the basic rules of fair play, justice, and due process.[12] Contrary to petitioner's contention, it would be the height of injustice if the CA allowed her to raise an issue at a very late stage of the proceedings. It would be unfair to the adverse party who would have no opportunity to present evidence in contra to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court.[13] It is true that this rule admits of exceptions as in cases of lack of jurisdiction, where the lower court committed plain error, where there are jurisprudential developments affecting the issues, or when the issues raised present a matter of public policy.[14] However, the Court finds that none of these exceptions are present in the instant case.

In addition, the issue regarding the date of maturity of the loan is factual and settled is the rule that only questions of law may be raised in a petition for review on certiorari under Rule 45 of the Rules of Court, as the Supreme Court is not a trier of facts.[15] It is not the function of this Court to review, examine and evaluate or weigh the probative value of the evidence presented.[16] While there are also exceptions to this rule such as when the factual findings of the trial court and the CA are contradictory; when the inference made by the CA is manifestly mistaken or absurd; when the judgment of the CA is premised on its misapprehension of facts; and, when the CA failed to resolve relevant facts which, if properly considered, would justify a modification or reversal of the decision of the appellate court,[17] this Court finds that the present case does not fall under any of these exceptions.

Even if petitioner had properly raised the issue regarding the real date of maturity of the loan, it is a long-held cardinal rule that when the terms of an agreement are reduced to writing, it is deemed to contain all the terms agreed upon and no evidence of such terms can be admitted other than the contents of the agreement itself.[18] In the present case, the promissory note and the real estate mortgage are the law between petitioner and private respondents. It is not disputed that under the Promissory Note dated July 20, 1981, the loan shall mature in one month from date of the said Promissory Note.

Petitioner makes much of the testimony of Atty. Edwina Mendoza that the maturity of the loan which petitioner incurred is one year. However, evidence of a prior or contemporaneous verbal agreement is generally not admissible to vary, contradict or defeat the operation of a valid contract.[19] While parol evidence is admissible to explain the meaning of written contracts, it cannot serve the purpose of incorporating into the contract additional contemporaneous conditions which are not mentioned at all in writing, unless there has been fraud or mistake.[20] In the instant case, aside from the testimony of Atty. Mendoza, no other evidence was presented to prove that the real date of maturity of the loan is one year. In fact there was not even any allegation in the Complaint and in the Memorandum filed by petitioner with the trial court to the effect that there has been fraud or mistake as to the date of the loan's maturity as contained in the Promissory Note of July 20, 1981.

Moreover, during her cross-examination, petitioner herself never claimed that the loan shall mature in one year despite being questioned regarding its maturity. She testified thus:

Q You said that you borrowed P850,000.00 to [sic] Mrs. Poblete, is that correct?

A Yes sir.

Q In fact, you signed a Real Estate Mortgage marked as Exhibit "B"?

A Yes sir.

Q When you signed this Deed of Real Estate Mortgage, you also signed a Promisory [sic] Note, is that correct?

RECORD: Witness did not answer.

Q Did you sign or not a Promisory [sic] note in relation to this Real Estate Mortgage.

A I don't remember sir. ½

Q You don't remember. I am showing to you a Promisory Note with your signature, did you not sign this dated July 20, 1981?

A Yes sir.

Q Now, according to this Promisory [sic] Note, the loan is for one (1) month from July 20, 1981, did you pay for that loan on its maturity date?

A I did not sir.

Q Up to now, you have not paid that loan?

A I have not sir.

Q What happen [sic] to the mortgage when you did not paid [sic] that loan from one (1) month after July 20, 1981?

A None sir.[21]

In sum, petitioner failed to present clear and convincing evidence to prove her allegation that the real agreement

of the parties is for the loan to mature in one year.

As to the second assigned error, the prevailing jurisprudence is that foreclosure proceedings have in their favor the presumption of regularity and the burden of evidence to rebut the same is on the petitioner.[22] Moreover, the Court agrees with the CA that a mortgagor who alleges absence of a requisite has the burden of establishing that fact.[23] Petitioner failed in this respect as she did not present any evidence to prove her allegations.

Moreover, the fact that the records of the foreclosure proceedings involving the subject property could not be found does not necessarily mean that the legal requirements of posting and publication had not been complied with. Private respondents were able to present the Affidavit of Publication[24] executed by the publisher of *Nuevo Horizonte*, a newspaper of general circulation, together with a clipping[25] of the published notice attached thereto, to prove that notices of the sale of the subject property were validly published in accordance with law. The affidavit of publication executed by the publisher of a newspaper stating therein that said newspaper is of general circulation and that the requisite notice of foreclosure sale was published in said paper in accordance with law constitutes prima facie evidence of compliance with the required publication.[26]

As to the alleged lack of posting of the notices of sale in at least three public places, herein petitioner failed to discharge her burden of proving by convincing evidence her allegation that there was actually no compliance with the posting requirement. Hence, in the absence of contrary evidence, the presumption prevails that the sheriff performed his official duty of posting the notices of sale.[27]

The Court's ruling in *Olizon v. Court of Appeals*,[28] insofar as posting and publication requirements in mortgage foreclosure sales are concerned, is instructive:

We take judicial notice of the fact that newspaper publications have more far-reaching effects than posting on bulletin boards in public places. There is a greater probability that an announcement or notice published in a newspaper of general circulation, which is distributed nationwide, shall have a readership of more people than that posted in a public bulletin board, no matter how strategic its location may be, which caters only to a limited few. Hence, the publication of the notice of sale in [a] newspaper of general circulation alone is more than sufficient compliance with the notice-posting requirement of the law. By such publication, a reasonably wide publicity had been effected such that those interested might attend the public sale, and the purpose of the law had been thereby subserved.

The object of a notice of sale is to inform the public of the nature and condition of the property to be sold, and of the time, place and terms of the sale. Notices are given for the purpose of securing bidders and to prevent a sacrifice of the property. If these objects are attained, immaterial errors and mistakes will not affect the sufficiency of the notice; but if mistakes or omissions occur in the notices of sale, which are calculated to deter or mislead bidders, to depreciate the value of the property, or to prevent it from bringing a fair price, such mistakes or omissions will be fatal to the validity of the notice, and also to the sale made pursuant thereto.

In the instant case, the aforesaid objective was attained since there was sufficient publicity of the sale through the newspaper publication. There is completely no showing that the property was sold for a price far below its value as to insinuate any bad faith, nor was there any showing or even an intimation of collusion between the sheriff who conducted the sale and respondent bank. This being so, the alleged non-compliance with the posting requirement, even if true, will not justify the setting aside of the sale.[29]

In the present case, there was sufficient evidence to prove that notices of the foreclosure sale of the subject property were published in accordance with law and that there was no allegation, much less proof, that the property was sold for a price which is considerably lower than its value as to show collusion between the sheriff and herein private respondents. Hence, even granting that the sheriff failed to post the notices of foreclosure in at least three public places, such failure, pursuant to *Olizon*, is not a sufficient basis in nullifying the auction sale and

the subsequent issuance of title in favor of private respondents.

As to petitioner's argument that the sheriff in charge of the auction sale is required to execute an affidavit of posting of notices, the Court agrees with private respondents' contention that petitioner's reliance on the provisions of Section 5, Republic Act (R.A.) No. 720, as amended by R.A. No. 5939[30], as well as on the cases of *Roxas v. Court of Appeals*,[31] *Pulido v. Court of Appeals*[32] and *Tambunting v. Court of Appeals*,[33] is misplaced as the said provision of law refers specifically and exclusively to the foreclosure of mortgages covering loans granted by rural banks. In the present case, the contracts of loan and mortgage are between private individuals. The governing law, insofar as the extrajudicial foreclosure proceedings are concerned, is Act No. 3135, as amended by Act No. 4118.[34] Section 3 of the said law reads as follows:

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.

Unlike in the amended provisions of Section 5, R.A. No. 720, nowhere in the above-quoted provision of Act No. 3135, as amended, or in any Section thereof, is it required that the sheriff must execute an affidavit to prove that he published notices of foreclosure in accordance with the requirements of law.

As to the last assigned error, suffice it to say that the Court agrees with the findings of the CA that the issue regarding petitioner's right to receive an Assessment Notice or Notice of Redemption from private respondents as the highest bidders during the auction sale was raised only in her Addendum to Motion for Reconsideration of the Decision of the CA. The Court reiterates the rule that points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time on appeal.[35]

Moreover, like the issue regarding the date of maturity of the loan, the question of whether or not petitioner received a copy of an Assessment Notice or Notice of Redemption from private respondents is also factual. As earlier explained, questions of fact are not proper subjects of appeal by certiorari under Rule 45 of the Rules of Court as this mode of appeal is confined to questions of law.[36]

Besides, there is nothing under Act No. 3135 which requires the highest bidder or purchaser to furnish the mortgagor or redemptioner an Assessment Notice or Notice of Redemption prior to the expiration of the period of redemption. Even the pertinent provisions of Section 30, Rule 39[37] of the old Rules of Court, which are the rules applicable in the present case, do not require that the mortgagor or redemptioner be furnished by the purchaser notice of any assessments or taxes which the latter may have paid after the purchase of the auctioned property, thus:

Sec. 30. Time and manner of, and amounts payable on, successive redemptions, notice to be given and filed. - The judgment debtor or redemptioner may redeem the property from the purchaser at any time within twelve (12) months after the sale, on paying the purchaser the amount of his purchase with one per centum per month interest thereon in addition, up to the time of redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after purchase and interest on such last named amount at the same rate; and if the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, and the amount of such other lien, with interest. Property so redeemed may again be redeemed within sixty (60) days after the last redemption upon payment of the sum paid on the last redemption, with two per centum thereon in addition, and the amount of any assessments or taxes which the last redemptioner may have paid thereon after redemption by him, with interest of such last-named amount, and in addition, the amount of any liens held by said last redemptioner prior to his own,

with interest. The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner within sixty (60) days after the last redemption, on paying the sum paid on the last previous redemption, with two per centum thereon in addition, and the amounts of any assessments or taxes which the last previous redemptioner paid after the redemption thereon, with interest thereon, and the amount of any liens held by the last redemptioner prior to his own, with interest.

Written notice of any redemption must be given to the officer who made the sale and a duplicate filed with the Registrar of Deeds of the province, and if any assessment of taxes are paid by the redemptioner or if he has or acquires any lien other than that upon which the redemption was made, notice thereof must in like manner be given to the officer and filed with the Registrar of Deeds; if such notice be not filed, the property may be redeemed without paying such assessments, taxes, or liens. (emphasis supplied)

Hence, even granting, for the sake of argument, that private respondents failed to comply with the directive in the Certificate of Sale issued by the Ex-Officio Provincial Sheriff of Rizal and the Deputy Sheriff In-Charge by giving a copy of statements of the amount of assessments or taxes which they may have paid on account of the purchase of the subject property, such failure would not invalidate the auction sale and the subsequent transfer of title over the subject property in their favor.

It bears to note that the purpose for requiring the purchaser to furnish copies of the amounts of assessments or taxes which he may have paid is to inform the mortgagor or redemptioner of the actual amount which he should pay in case he chooses to exercise his right of redemption. If no such notice is given, the only effect is that the property may be redeemed without paying such assessments or taxes.[38] In fact, it would have been beneficial on the part of herein petitioner if private respondents failed to submit to the office of the sheriff and furnish her a copy of the statements of the taxes and assessments they paid because in such a case petitioner would have been excused from reimbursing such assessments and taxes if she redeemed the property. The fact remains, however, that petitioner failed to redeem the subject property.

WHEREFORE, the instant petition is DENIED and the assailed Decision and Resolution of the Court of Appeals are AFFIRMED in toto.

Costs against petitioner.

SO ORDERED.

Ynares-Santiago, (Chairperson), Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Penned by Justice Mercedes Gozo-Dadole (now retired) and concurred in by Justices Eubulo G. Verzola (now deceased) and Artemio G. Tuquero (now retired).

[2] Penned by Justice Rodrigo V. Cosico and concurred in by Justices Godardo A. Jacinto (now retired) and Remedios Salazar-Fernando.

[3] Records, p. 327.

[4] Exhibit "A", id. at 28. The property is now considered part of San Juan, Metro Manila.

[5] Exhibit "B", id. at 30.

[6] Exhibit "C", id. at 31.

[7] Exhibit "D", id. at 34.

[8] Id. at 730.

- [9] CA rollo, pp. 97-109.
- [10] Id. at 211-217.
- [11] Rollo, pp. 13-14.
- [12] *Twin Towers Condominium Corporation v. Court of Appeals*, 446 Phil. 280, 303 (2003).
- [13] *Ulep v. Court of Appeals*, G.R. No. 125254, October 11, 2005, 472 SCRA 241, 257.
- [14] Id.
- [15] *Permanent Savings and Loan Bank v. Velarde*, G.R. No. 140608, September 23, 2004, 439 SCRA 1, 7.
- [16] Id.
- [17] *Cabotaje v. Pudunan*, G.R. No. 134712, August 13, 2004, 436 SCRA 423, 432.
- [18] *Spouses Sabio v. The International Corporate Bank, Inc.*, 416 Phil. 785, 807 (2001).
- [19] *Lapulapu Foundation, Inc. v. Court of Appeals*, G.R. No. 126006, January 29, 2004, 421 SCRA 328, 336.
- [20] Id.
- [21] TSN, June 8, 1992, pp. 18-19.
- [22] *Villavicencio v. Mojares*, 446 Phil. 421, 429 (2003); *Cristobal v. Court of Appeals*, 384 Phil. 807, 815 (2000).
- [23] Id.
- [24] Exhibit "F", records, p. 37.
- [25] Exhibit "F-1", id.
- [26] *Fortune Motors (Phils.) Inc. v. Metropolitan Bank and Trust Co.*, 332 Phil 844, 849 (1996), citing *Bonnevie v. Court of Appeals*, G.R. No. L-49101, October 24, 1983, 125 SCRA 122, 134.
- [27] *Development Bank of the Philippines v. Court of Appeals*, 451 Phil. 563, 573 (2003).
- [28] G.R. No. 107075, September 1, 1994, 236 SCRA 148.
- [29] Id. at 155-156.
- [30] An Act Providing for the Creation, Organization and Operation of Rural Banks, and for other purposes.
- [31] G.R. No. 100480, May 11, 1993, 221 SCRA 729.
- [32] G.R. No. 109244, December 29, 1995, 251 SCRA 673.
- [33] G.R. No. L-48278, November 8, 1988, 167 SCRA 16.
- [34] An Act To Regulate The Sale Of Property Under Special Powers Inserted In Or Annexed To Real Estate Mortgages.
- [35] *Ulep v. Court of Appeals*, supra note 13.
- [36] *Goyena v. Ledesma-Gustilo*, 443 Phil. 150, 158 (2003).
- [37] Now Section 28, Rule 39 of the Rules of Court, as amended.

[38] Spouses Estanislao, Jr. v. Court of Appeals, 414 Phil. 509, 519 (2001).

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