DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS. VERONICA AGUIRRE AND THE HONORABLE COURT OF APPEALS (NINTH DIVISION), RESPONDENTS.

G.R. No. 144877. September 07, 2001

Ponente: MENDOZA, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-144877/

MENDOZA, J.:

This is a petition for review of the decision,[1] dated December 29, 1999, of the Court of Appeals, annulling the foreclosure proceedings undertaken by petitioner Development Bank of the Philippines (DBP).

The facts are as follows:

In 1980, petitioner DBP granted a loan to Veronica Aguirre in the amount of P99,500.00, with interest at 14% per annum, payable in 25 years at monthly installments of P1,147.92. To secure the loan, respondent Aguirre executed a mortgage over a 180-square meter lot in Parañaque and issued two promissory notes covering the amount of the loan. As respondent Aguirre defaulted, petitioner took steps in 1982 to foreclose the mortgage. Upon request of respondent Aguirre, petitioner offered to restructure her loan upon payment of P25,333.79, or, in the alternative, upon payment of at least 10% of the arrears coupled with the execution of additional collateral to cover the remaining obligation. Respondent was given seven days to accept or reject the offer. As respondent did not respond to the offer, petitioner proceeded with the foreclosure of the mortgage. Respondent Aguirre made two payments on September 24 and October 10, 1986 in the amounts of P9,000.00 and P22,000.00, respectively, which petitioner deducted from respondent's outstanding balance.

The notice for the foreclosure sale, to be held on September 25, 1985 in the municipal building of the Parañaque, was published in Mabuhay, a newspaper of general circulation in Bulacan and Metro Manila, in its issues of August 25, September 1, and 8, 1985. For some reason, however, the foreclosure sale scheduled on September 25, 1985 did not take place on the said date but on January 7, 1986, during which petitioner was the highest bidder for P99,300.00. As of the time of the sale, respondent Aguirre's total outstanding obligation was P247,740.70. The certificate of sale was registered in the Office of the Registrar of Parañaque on July 16, 1987.

As respondent Aguirre failed to redeem the property, DBP consolidated its title and advertised the sale of the foreclosed lot through a public auction scheduled on December 6, 1988. On the day of the bidding, respondent Aguirre brought suit against DBP in the Regional Trial Court, Branch 134, Makati City to enjoin the scheduled auction sale and to annul the extrajudicial sale of January 7, 1986. Respondent claimed that her loan was not yet due because it had been restructured and that she had not been personally notified of the foreclosure sale. The trial court issued a restraining order and, subsequently, a writ of preliminary injunction, to restrain the auction sale pending the resolution of the case.

Petitioner DBP denied respondent Aguirre's contention that the loan had been restructured and claimed that it had personally notified her of the sale. It contended that respondent Aguirre failed to redeem the property, for which reason it consolidated its title. As counterclaim, DBP sought payment of the deficiency claim in the amount of

P241,658.39 computed as of December 30, 1988.

On May 9, 1996, the trial court rendered its decision. It found that DBP had complied with the publication requirement in the foreclosure of the mortgage in question and that respondent Aguirre failed to overcome the presumption of regularity of performance of official duty with regard to the posting of the notice of sale; that respondent had defaulted in the payment of its loan; and that although there were negotiations for the restructuring of respondent Aguirre's loan, no agreement was reached by the parties. On the other hand, the trial court found no merit in DBP's counterclaim. Consequently, it vacated the writ of preliminary injunction and dismissed respondent Aguirre's complaint as well as DBP's counterclaim.

Both petitioner and respondent Aguirre appealed to the Court of Appeals which, on December 29, 1999, reversed the decision of the trial court insofar as the appeal of respondent Aguirre was concerned and invalidated the foreclosure sale on the ground that petitioner's failure to present proof of posting of the notice of sale rendered the foreclosure proceedings invalid.

Hence this petition of DBP. Petitioner submits the following assignment of errors allegedly committed by the appeals court:

> 1. The Honorable Court of Appeals erred when it declared null and void the extra-judicial proceeding initiated by Petitioner DBP on the ground that it did not comply with the required proof of posting.
>
> 2. The Honorable Court of Appeals erred in not dismissing the appeal of respondent when it wrongfully applied the Supreme Court ruling in the Pulido vs. CA, 252 SCRA 673, instead of the ruling in the Olizon vs. CA, 236 SCRA 148, which squarely applies in the present case.
>
> 3. The Honorable Court of Appeals erred in denying DBP's claim for deficiency when it declared null and void the foreclosure proceedings initiated by Petitioner DBP.[2]

We find the petition to be without merit.

Under Act No. 3135, §3,[3] if the value of the property subject of the foreclosure is more than P400.00, the notice of sale must be posted and published. The failure to post a notice is not per se a ground for invalidating the sale provided that the notice thereof is duly published in a newspaper of general circulation. As this Court explained in Olizon v. Court of Appeals:[4]

> [N]ewspaper 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 the 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.

In this case, a notice of extrajudicial foreclosure sale was published on August 25, September 1, and 8, 1985 in a newspaper of general circulation in Metro Manila in accordance with §3. Said notice reads:

> PURSUANT to the terms of the Deed of Real Estate Mortgage dated April 21, 1980 executed by Mortgagor Veronica Aguirre, in favor of the Mortgagee DEVELOPMENT BANK OF THE PHILIPPINES, to satisfy the mortgage indebtedness amounting to P194,375.52 PESOS, in Philippine currency as of December 2, 1984, including interest, penalty, attorney's fees and other charges together with all lawful fees and expenses of foreclosure sale, the EXECUTIVE JUDGE of the Regional Trial Court of Makati, Metro Manila thru the undersigned Clerk of Court and Ex-Oficio Sheriff of Makati, Metro Manila, hereby announces that on Sept. 25, 1985 at 10:00 o'clock in the morning or soon thereafter, in front of the main Entrance of the Municipal

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

> Building of Parañaque, Metro Manila, he and/or the deputy sheriff incharge will sell at public auction to the highest bidder and for cash, in Philippine currency the following real property with all its improvements existing thereon, to wit:
>
> TRANSFER CERTIFICATE OF TITLE NO. 442775[5]
> REGISTRY OF DEEDS OF PASAY CITY
>
> "A parcel of land (Lot 40, Block 7 of the consolidation subdivision plan (LRC) Pcs-14155, being a portion of the consolidation of Psu-163344-D, Psu-166150 & Psu-172231-B, Lots 3491, 4628, 4645, 4646 & 4647, Parañaque Cadastre, LRC Rec. Nos. N-15340, N-14850, N-17130, N-27659, N-27451, N-26759, N-35586, N-26753 and N-19075), situated in the Barrio of San Dionisio, Municipality of Paranaque, Province of Rizal, Island of Luzon. Bounded on the SE., points 2 to 3 by Road Lot 11 of the consolidation subdivision plan; on the SW., points 3 to 4 by Lot 42; on the NW., points 4 to 5 by Lot 39; points 5 to 1 by Lot 37; and on the NE., points 1 to 2 by Lot 39, all of Block 7 of the consolidation subdivision plan. x x x Containing an area of ONE HUNDRED EIGHTY (180) SQUARE METERS, more or less."[6]

However, although the notice of foreclosure sale was duly published, the sale did not take place as scheduled on September 25, 1985. Instead, it was held more than two months after the published date of the sale or on January 7, 1986. This renders the sale void. As held in Masantol Rural Bank, Inc. v. Court of Appeals,[7] in which the foreclosure sale likewise took place several months after the date indicated in the published notice of sale -

> Act. No. 3135, as amended, which governs the extrajudicial foreclosure of mortgages on real property specifies the following publication requirements:
>
> "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."

[In this case, n]otice of the first auction sale scheduled for 20 October 1977 had been duly published as required by Section 3 of Act No. 3135, as amended. No auction sale, however, took place on that day. The auction sale during which Masantol Bank bought the property as sole bidder was conducted eight (8) months later, on 22 June 1978. Masantol Bank alleged that there was re-publication of the notice of the 22 June 1978 auction sale; Remedios B. Soriano contends otherwise.

The evidence submitted by Masantol Bank as tending to prove its compliance with the publication requirement in respect of the 22 June 1978 auction sale consisted simply of the testimony of Atty. Venancio Viray and a provisional receipt of payment of the alleged publication expenses signed by a stenographer of the newspaper Economic Monitor. Remedios Soriano, upon the other hand, presented a solicitor of the Economic Monitor¾where the notice of auction sale was supposed to have been published¾who testified that he had not seen from their records any document indicating that the notice of auction sale was in fact published.

It is settled doctrine that failure to publish the notice of auction sale as required by the statute constitutes a jurisdictional defect which invalidates the sale. The Court is not persuaded either that the evidence presented by Masantol Bank sufficiently established its compliance with the statutory requirement of notice, or that the testimony of Remedios Soriano's witness showed non-compliance with such requirement.[8]

The foregoing ruling squarely applies in this case. Although the lack of republication of the notice of sale has not been raised in this case, this Court is possessed of ample power to look into a relevant issue, such as the lack of jurisdiction to hold the foreclosure sale.[9]

Considering that her loan remains unpaid, respondent Aguirre should be ordered to pay her outstanding obligation

in the amount of P247,740.70 with interest at the rate stipulated in the contract of loan to be computed as of January 7, 1986, subject to the right of petitioner to foreclose the mortgage upon respondent Aguirre's failure to settle her obligation.

WHEREFORE, the decision of the Court of Appeals, dated December 29, 1999, is AFFIRMED with the MODIFICATION that private respondent Veronica Aguirre is ordered to pay petitioner the amount of P247,740.70 with interest as stipulated in the contract of loan, as of January 7, 1986, without prejudice to the right of petitioner to foreclose the real estate mortgage executed by respondent Aguirre on April 21, 1980 upon failure of respondent Aguirre to pay the said amount.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

---

[1] Per Ramon Mabutas, Jr., and concurred in by Justices Hilarion L. Aquino and Elvi John S. Asuncion.

[2] Petition, p. 7; Rollo, p. 32.

[3] This provision reads: "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."

[4] 236 SCRA 148, 155-156 (1994) (emphasis added).

[5] In the complaint filed by respondent Aguirre with the trial court, the mortgaged property was alleged to be covered by TCT No. 27538, which, except for a few typographical errors, bears the same technical description as the lot covered by TCT No. 442775.

[6] Exh. 11; Rollo, p. 209.

[7] 204 SCRA 752 (1991); See also Tambunting v. Court of Appeals, 167 SCRA 16 (1988).

[8] Masantol Rural Bank, Inc. v. Court of Appeals, supra at 761-763 (1991).

[9] Cf. PLDT Company v. Free Telephone Workers Union, 116 SCRA 145 (1982).

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.