

**ERLINDA GAJUDO, FERNANDO GAJUDO, JR., ESTELITA GAJUDO,
BALTAZAR GAJUDO AND DANILO ARAHAN CHUA, PETITIONERS, VS.
TRADERS ROYAL BANK, RESPONDENT**

G.R. NO. 151098. March 21, 2006

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PANGANIBAN, CJ:

The mere fact that a defendant is declared in default does not automatically result in the grant of the prayers of the plaintiff. To win, the latter must still present the same quantum of evidence that would be required if the defendant were still present. A party that defaults is not deprived of its rights, except the right to be heard and to present evidence to the trial court. If the evidence presented does not support a judgment for the plaintiff, the complaint should be dismissed, even if the defendant may not have been heard or allowed to present any countervailing evidence.

The Case

Before us is a Petition for Review[2] under Rule 45 of the Rules of Court, assailing the June 29, 2001 Decision[3] and December 6, 2001 Resolution[4] of the Court of Appeals (CA) in CA-GR CV No. 43889. The CA disposed as follows:

"UPON THE VIEW WE TAKE OF THIS CASE, THUS, the partial judgment appealed from, must be, as it hereby is, VACATED and SET ASIDE, and another one entered DISMISSING the complaint at bench. Without costs."[5]

The assailed Resolution denied petitioners' Motion for Reconsideration[6] for lack of merit.

The Facts

The CA narrated the facts as follows:

"[Petitioners] filed a complaint before the Regional Trial Court of Quezon City, Branch 90, against [respondent] Traders Royal Bank, the City Sheriff of Quezon City and the Register of Deeds of Quezon City. Docketed thereat as Civil Case No. Q-41203, the complaint sought the annulment of the extra-judicial foreclosure and auction sale made by [the] city sheriff of Quezon City of a parcel of land covered by TCT No. 16711 of the Register of Deeds of Quezon City, the conventional redemption thereof, and prayed for damages and the issuance of a writ of preliminary injunction.

"The complaint alleged that in mid 1977, [Petitioner] Danilo Chua obtained a loan from [respondent] bank in the amount of P75,000.00 secured by a real estate mortgage over a parcel of land covered by TCT No. 16711, and owned in common by the [petitioners]; that when the loan was not paid, [respondent] bank commenced extra-judicial foreclosure proceedings on the property; that the auction sale of the property was set on 10 June 1981, but was reset to 31 August 1981, on [Petitioner Chua's] request, which, however, was made without the knowledge and conformity of the other [petitioners]; that on the re-scheduled auction sale, [the] Sheriff of Quezon City sold the property to the [respondent] bank, the highest bidder therein, for the sum of P24,911.30; that the auction sale was tainted with irregularity because, amongst others, the bid price was shockingly or

unconscionably, low; that the other [petitioners] failed to redeem the property due to their lack of knowledge of their right of redemption, and want of sufficient education; that, although the period of redemption had long expired, [Petitioner] Chua offered to buy back, and [respondent] bank also agreed to sell back, the foreclosed property, on the understanding that Chua would pay [respondent] bank the amount of P40,135.53, representing the sum that the bank paid at the auction sale, plus interest; that [Petitioner] Chua made an initial payment thereon in the amount of P4,000.00, covered by Interbank Check No. 09173938, dated 16 February 1984, duly receipted by [respondent] bank; that, in a sudden change of position, [respondent] bank wrote Chua, on 20 February 1984, asking that he could repurchase the property, but based on the current market value thereof; and that sometime later, or on 22 March 1984, [respondent] bank wrote Chua anew, requiring him to tender a new offer to counter the offer made thereon by another buyer.

"Traversing [petitioners'] complaint, [respondent] bank, upon 05 July 1984, filed its answer with counterclaim, thereunder asserting that the foreclosure sale of the mortgaged property was done in accordance with law; and that the bid price was neither unconscionable, nor shockingly low; that [petitioners] slept on their rights when they failed to redeem the property within the one year statutory period; and that [respondent] bank, in offering to sell the property to [Petitioner] Chua on the basis of its current market price, was acting conformably with law, and with legitimate banking practice and regulations.

"Pre-trial having been concluded, the parties entered upon trial, which dragged/lengthened to several months due to postponements. Upon 11 June 1988, however, a big conflagration hit the City Hall of Quezon City, which destroyed, amongst other things, the records of the case. After the records were reconstituted, [petitioners] discovered that the foreclosed property was sold by [respondent] bank to the Ceroferri Realty Corporation, and that the notice of lis pendens annotated on the certificate of title of the foreclosed property, had already been cancelled. Accordingly, [petitioners], with leave of court, amended their complaint, but the Trial Court dismissed the case 'without prejudice' due to [petitioners'] failure to pay additional filing fees.

"So, upon 11 June 1990, [petitioners] re-filed the complaint with the same Court, whereat it was docketed as Civil Case No. 90-5749, and assigned to Branch 98; the amended complaint substantially reproduced the allegations of the original complaint. But [petitioners] this time impleaded as additional defendants the Ceroferri Realty Corporation and/or Cesar Roque, and Lorna Roque, and included an additional cause of action, to wit: that said new defendants conspired with [respondent] bank in [canceling] the notice of lis pendens by falsifying a letter sent to and filed with the office of the Register of Deeds of Quezon City, purportedly for the cancellation of said notice.

"Summons was served on [respondent] bank on 26 September 1990, per Sheriff's Return dated 08 October 1990. Supposing that all the defendants had filed their answer, [petitioners] filed, on 23 October 1991, a motion to set case for pre-trial, which motion was, however, denied by the Trial Court in its Order of 25 October 1991, on the ground that [respondent] bank has not yet filed its answer. On 13 November 1991, [petitioners] filed a motion for reconsideration, thereunder alleging that they received by registered mail, on 19 October 1990, a copy of [respondent] bank's answer with counterclaim, dated 04 October 1990, which copy was attached to the motion. In its Order of 14 November 1991, the Trial Court denied for lack of merit, the motion for reconsideration, therein holding that the answer with counterclaim filed by [respondent] bank referred to another civil case pending before Branch 90 of the same Court.

"For this reason, [petitioners] filed on 02 December 1991 a motion to declare [respondent] bank in default, thereunder alleging that no answer has been filed despite the service of summons on it on 26 September 1990.

"On 13 December 1991, the Trial Court declared the motion submitted for resolution upon submission by [petitioners] of proof of service of the motion on [respondent] bank.

"Thus, on 16 January 1992, upon proof that [petitioners] had indeed served [respondent] bank with a copy of said motion, the Trial Court issued an Order of default against [respondent] bank.

"Upon 01 December 1992, on [petitioners'] motion, they were by the Court allowed to present evidence ex parte on 07 January 1993, insofar as [respondent] bank was concerned.

"Thereafter, or on 08 February 1993, the Trial Court rendered the new questioned partial decision.[7]

"Aggrieved, [respondent] bank filed a motion to set aside [the] partial decision by default against Traders Royal Bank and admit [respondent] Traders Royal Bank's x x x Answer with counterclaim: thereunder it averred, amongst others, that the erroneous filing of said answer was due to an honest mistake of the typist and inadvertence of its counsel.

"The [trial court] thumbed down the motion in its Order of 26 July 1993."[8]

Respondent bank appealed the Partial Decision[9] to the CA. During the pendency of that appeal, Cerofer Realty Corporation and/or Cesar and/or Lorna Roque filed a Manifestation with Motion[10] asking the CA to discharge them as parties, because the case against them had already been dismissed on the basis of their Compromise Agreement[11] with petitioners. On May 14, 1996, the CA issued a Resolution[12] granting Cerofer et al.'s Manifestation with Motion to discharge movants as parties to the appeal. The Court, though, deferred resolution of the matters raised in the Comment[13] of respondent bank. The latter contended that the Partial Decision had been novated by the Compromise Agreement, whose effect of res judicata had rendered that Decision functus officio.

Ruling of the Court of Appeals

The CA ruled in favor of respondent bank. Deemed, however, to have rested on shaky ground was the latter's "Motion to Set Aside Partial Decision by Default Against Traders Royal Bank and Admit Defendant Traders Royal Bank's Answer." [14] The reasons offered by the bank for failing to file an answer were considered by the appellate court to be "at once specious, shallow and sophistical and can hardly be dignified as a 'mistake' or 'excusable negligence,' which ordinary prudence could not have guarded against." [15]

In particular, the CA ruled that the erroneous docket number placed on the Answer filed before the trial court was not an excusable negligence by the bank's counsel. The latter had a bounden duty to be scrupulously careful in reviewing pleadings. Also, there were several opportunities to discover and rectify the mistake, but these were not taken. Moreover, the bank's Motion to Set Aside the Partial Decision and to Admit [the] Answer was not accompanied by an affidavit of merit. These mistakes and the inexcusable negligence committed by respondent's lawyer were binding on the bank.

On the issue of whether petitioners had convincingly established their right to relief, the appellate court held that there was no ground to invalidate the foreclosure sale of the mortgaged property. First, under Section 3 of Act No. 3135, an extrajudicial foreclosure sale did not require personal notice to the mortgagor. Second, there was no allegation or proof of noncompliance with the publication requirement and the public posting of the notice of sale, provided under Act No. 3135, as amended. Third, there was no showing of inadequacy of price as no competent evidence was presented to show the real market value of the land sold or the readiness of another buyer to offer a price higher than that at which the property had been sold.

Moreover, petitioners failed to prove that the bank had agreed to sell the property back to them. After pointing out that the redemption period had long expired, respondent's written communications to Petitioner Chua only showed, at most, that the former had made a proposal for the latter to buy back the property at the current market price; and that Petitioner Chua was requested to make an offer to repurchase the property, because another buyer had already made an offer to buy it. On the other hand, respondent noted that the Interbank check for P4,000 was for "deposit only." Thus, there was no showing that the check had been issued to cover part of the repurchase

price.

The appellate court also held that the Compromise Agreement had not resulted in the novation of the Partial Decision, because the two were not incompatible. In fact, the bank was not even a party to the Agreement. Petitioners' recognition of Cerofer's title to the mortgaged property was intended to preclude future litigation against it.

Hence this Petition.[16]

Issues

In their Memorandum, petitioners raise the following issues:

"1. Whether or not the Respondent Court of Appeals erred in failing to apply the provisions of Section 3, Rule 9 of the 1997 Rules of Civil Procedure [and in applying instead] the rule on preponderance of evidence under Section 1, Rule 133 of the Rules of Court.

"2. Whether or not the respondent appellate court failed to apply the conventional redemption rule provided for under Article 1601 of the New Civil Code.

"3. Whether or not this Honorable Court can exercise its judicial prerogative to evaluate the findings of facts."[17]

The first issue is one of law and may be taken up by the Court without hindrance, pursuant to Section 1 of Rule 45 of the Rules of Court.[18] The second and the third issues, however, would entail an evaluation of the factual findings of the appellate court, a function ordinarily not assumed by this Court, unless in some excepted cases. The Court will thus rule on the first issue before addressing the second and the third issues jointly.

The Court's Ruling

The Petition has no merit.

First Issue: Quantum of Proof

Petitioners challenge the CA Decision for applying Section 3 of Rule 9 of the Rules of Court, rather than Section 1 of Rule 133 of the same Rules. In essence, petitioners argue that the quantum of evidence for judgments flowing from a default order under Section 3 of Rule 9 is not the same as that provided for in Section 1 of Rule 133.

For ease of discussion, these two rules will be reproduced below, starting with Section 3 of Rule 9 of the Rules of Court:

"Sec. 3. Default; declaration of. — If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court.

"(a) Effect of order of default. — A party in default shall be entitled to notice of subsequent proceedings but not to take part in the trial.

"(b) Relief from order of default. — A party declared in default may at any time after notice thereof and before judgment file a motion under oath to set aside the order of default upon proper showing that his failure to answer was due to fraud, accident, mistake or excusable negligence and that he has a meritorious defense. In such case, the order of default may be set aside on such terms and conditions as the judge may impose in the interest of justice.

"(c) Effect of partial default. — When a pleading asserting a claim states a common cause of action against several defending parties, some of whom answer and the others fail to do so, the court shall try the case against all upon the answers thus filed and render judgment upon the evidence presented.

"(d) Extent of relief to be awarded. — A judgment rendered against a party in default shall not exceed the amount or be different in kind from that prayed for nor award unliquidated damages.

"(e) Where no defaults allowed. — If the defending party in an action for annulment or declaration of nullity of marriage or for legal separation fails to answer, the court shall order the prosecuting attorney to investigate whether or not a collusion between the parties exists, and if there is no collusion, to intervene for the State in order to see to it that the evidence submitted is not fabricated."

We now quote Section 1 of Rule 133:

"SECTION 1. Preponderance of evidence, how determined. — In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number."

Between the two rules, there is no incompatibility that would preclude the application of either one of them. To begin with, Section 3 of Rule 9 governs the procedure which the trial court is directed to take when a defendant fails to file an answer. According to this provision, the court "shall proceed to render judgment granting the claimant such relief as his pleading may warrant," subject to the court's discretion on whether to require the presentation of evidence *ex parte*. The same provision also sets down guidelines on the nature and extent of the relief that may be granted. In particular, the court's judgment "shall not exceed the amount or be different in kind from that prayed for nor award unliquidated damages."

As in other civil cases, basic is the rule that the party making allegations has the burden of proving them by a preponderance of evidence.[19] Moreover, parties must rely on the strength of their own evidence, not upon the weakness of the defense offered by their opponent.[20] This principle holds true, especially when the latter has had no opportunity to present evidence because of a default order. Needless to say, the extent of the relief that may be granted can only be as much as has been alleged and proved[21] with preponderant evidence required under Section 1 of Rule 133.

Regarding judgments by default, it was explained in *Pascua v. Florendo*[22] that complainants are not automatically entitled to the relief prayed for, once the defendants are declared in default. Favorable relief can be granted only after the court has ascertained that the relief is warranted by the evidence offered and the facts proven by the presenting party. In *Pascua*, this Court ruled that "x x x it would be meaningless to require presentation of evidence if every time the other party is declared in default, a decision would automatically be rendered in favor of the non-defaulting party and exactly according to the tenor of his prayer. This is not contemplated by the Rules nor is it sanctioned by the due process clause." [23]

The import of a judgment by default was further clarified in *Lim Tanhu v. Ramolete*. [24] The following disquisition is most instructive:

"Unequivocal, in the literal sense, as these provisions [referring to the subject of default then under Rule 18 of the old Rules of Civil Procedure] are, they do not readily convey the full import of what they contemplate. To

begin with, contrary to the immediate notion that can be drawn from their language, these provisions are not to be understood as meaning that default or the failure of the defendant to answer should 'be interpreted as an admission by the said defendant that the plaintiff's cause of action find support in the law or that plaintiff is entitled to the relief prayed for.' x x x.

x x x x x x x x

Being declared in default does not constitute a waiver of rights except that of being heard and of presenting evidence in the trial court. x x x.

"In other words, a defaulted defendant is not actually thrown out of court. While in a sense it may be said that by defaulting he leaves himself at the mercy of the court, the rules see to it that any judgment against him must be in accordance with law. The evidence to support the plaintiff's cause is, of course, presented in his absence, but the court is not supposed to admit that which is basically incompetent. Although the defendant would not be in a position to object, elementary justice requires that only legal evidence should be considered against him. If the evidence presented should not be sufficient to justify a judgment for the plaintiff, the complaint must be dismissed. And if an unfavorable judgment should be justifiable, it cannot exceed in amount or be different in kind from what is prayed for in the complaint." [25]

In sum, while petitioners were allowed to present evidence ex parte under Section 3 of Rule 9, they were not excused from establishing their claims for damages by the required quantum of proof under Section 1 of Rule 133. Stated differently, any advantage they may have gained from the ex parte presentation of evidence does not lower the degree of proof required. Clearly then, there is no incompatibility between the two rules.

Second and Third Issues: Review of the Evidence

Petitioners urge this Court to depart from the general rule that the lower courts' findings of fact are not reviewable in a petition for review. [26] In support of their plea, they cite the conflicting findings of the trial and the appellate courts, as well as the alleged conjectures and surmises made by the CA in arriving at its Decision.

Indeed, the differences between the findings of the two courts a quo, leading to entirely disparate dispositions, is reason enough for this Court to review the evidence in this case. [27] Whether the CA indulged in surmises and conjectures when it issued the assailed Decision will thus be determined.

At the outset, it behooves this Court to clarify the CA's impression that no evidence was presented in the case which might have contributed to petitioners' challenge to its Decision. The appellate court's observation was based on the notation by the lower court's clerk of court that there were no separate folders for exhibits and transcripts, because "there was no actual hearing conducted in this case." [28]

True, there was no hearing conducted between petitioners and respondent, precisely because the latter had been declared in default, and petitioners had therefore been ordered to present their evidence ex parte. But the absence of a hearing did not mean that no evidence was presented. The Partial Decision dated February 8, 1993, in fact clearly enumerated the pieces of evidence adduced by petitioners during the ex parte presentation on January 7, 1993. The documentary evidence they presented consisted of the following:

- A copy of respondent bank's Petition for the extrajudicial foreclosure and auction sale of the mortgaged parcel of land [29]
- The Certificate of Sale that was a consequence of the foreclosure sale [30]
- A Statement of Account dated February 15, 1984, showing Petitioner Chua's outstanding debt in the amount of P40,135.53 [31]

- A copy of the Interbank check dated February 16, 1984, in the amount of P4,000[32]
- The Official Receipt issued by the bank acknowledging the check[33]
- The bank's letter dated February 20, 1984, advising Petitioner Chua of the sale of the property at an extrajudicial public auction; the lapse of the period of redemption; and an invitation to purchase the property at its current market price[34]
- Another letter from the bank dated March 22, 1984, inviting Petitioner Chua to submit, within five days, an offer to buy the same property, which another buyer had offered to buy[35]
- A copy of the Notice of Lis Pendens, the filing of which was done after that of the Amended Complaint[36]
- A copy of the title showing the inscription of the Notice of Lis Pendens[37]
- A copy of the Absolute Deed of Sale to Cerrofer[38]
- A copy of a letter dated August 29, 1986, made and signed by petitioners' counsel, requesting the cancellation of the Notice of Lis Pendens[39]
- A copy of a page of the Memorandum of Encumbrance from TCT No. (314341) 7778/T-39[40]

Having clarified this matter, we proceed to review the facts.

Petitioners do not deny that the one-year period for legal redemption had already lapsed when respondent bank supposedly offered to sell the property in question. The records clearly show that the Certificate of Sale following the extrajudicial public auction of the property was registered on June 21, 1982, the date from which the legal redemption period was to be reckoned.[41] Petitioners insist, though, that they had the right to repurchase the property through conventional redemption, as provided under Article 1601 of the Civil Code, worded as follows:

"ART. 1601. Conventional redemption shall take place when the vendor reserves the right to repurchase the thing sold, with the obligation to comply with the provisions of Article 1616 and other stipulations which may have been agreed upon."

It is true that the one-year period of redemption provided in Act No. 3135, as amended — the law under which the property here was sold in a foreclosure sale — is only directory and, as such can be extended by agreement of the parties.[42] However, it has also been held that for legal redemption to be converted into conventional redemption, two requisites must be established: 1) voluntary agreement of the parties to extend the redemption period; and 2) the debtor's commitment to pay the redemption price on a fixed date.[43] Thus, assuming that an offer was made to Petitioner Chua to buy back the property after the lapse of the period of legal redemption, petitioners needed to show that the parties had agreed to extend the period, and that Petitioner Chua had committed to pay the redemption price on a fixed date.

The letters sent by the bank to Petitioner Chua on February 20 and March 22, 1984, do not convincingly show that the parties arrived at a firm agreement for the repurchase of the property. What can be gleaned from the February 20 letter is that Petitioner Chua proposed to pay the redemption price for the property, but that the bank refused to accede to his request, because the one-year redemption period had already lapsed.[44] The bank, though, had offered to sell back the property to him at the current market value. Indeed, an examination of his earlier letter of February 17, 1984, readily reveals that he expressed willingness to settle his account with the bank, but that his "present financial situation precludes [him] from effecting an immediate settlement x x x." [45]

On the other hand, the letter dated March 22, 1984, clearly states that "x x x the Bank rejected [his] request to redeem said property due to [the] lapse of [the] one (1) year legal redemption period." [46] Nonetheless, he was

"[invited] to submit an offer to buy the same property in five (5) days from receipt [of the letter]."[47] Petitioner Chua was also informed that the bank had received an offer to purchase the foreclosed property. As to the P4,000 check enclosed in his proposal dated February 17, 1984, as a token of his good faith, he was advised that the amount was still outstanding in the books of the bank and could be claimed by him if he thought the invitation was not feasible.

More important, there was no showing that petitioners had committed to pay the redemption price on a fixed date. True, Petitioner Chua had attempted to establish a previous agreement to repurchase the property for less than its fair market value. He had submitted in evidence a Statement of Account[48] dated February 15, 1984, showing a balance of P40,135.53; the Interbank check dated February 16, 1984, for P4,000, which was deposited to the account of respondent bank;[49] and the Official Receipt for the check.[50]

Granting that these documents evinced an agreement, petitioners were still unable to establish a firm commitment on their part to pay the redemption price on a fixed date. On the contrary, the February 17 letter of Petitioner Chua to the bank clearly manifested that he was not capable of paying the account immediately. For this reason, he proposed to pay in "three or four installments" without a specification of dates for the payments, but with a plea for a reduction of the interest charges. That proposal was rejected.

Indeed, other than the Interbank check marked "for deposit" by respondent bank, no other evidence was presented to establish that petitioners had offered to pay the alleged redemption price of P40,135.53 on a fixed date. For that matter, petitioners have not shown that they tendered payment of the balance and/or consigned the payment to the court, in order to fulfill their part of the purported agreement. These remedies are available to an aggrieved debtor under Article 1256 of the Civil Code,[51] when the creditor unjustly refuses to accept the payment of an obligation.

The next question that presents itself for resolution is the propriety of the CA's ruling vacating the Partial Decision of the regional trial court (RTC) and dismissing the case. To recall, the RTC had resolved to withhold a ruling on petitioners' right to redeem conventionally and/or order the reconveyance of the property in question, pending a determination of the validity of the sale to Cerrofer Realty Corporation and Spouses Cesar and Lorna Roque. The trial court, however, granted the prayer for damages against respondent bank. The RTC ruled as follows:

"The evidence presented by [petitioners] in so far as the cause of action against [respondent] Traders Royal Bank is concerned are preponderant to support the claims of the [petitioners]. However, in view of the fact that the property subject matter of this case has already been conveyed to defendant Cerrofer Realty Corporation thus the issue as to whether or not the said conveyance or sale is valid is still pending between the [petitioners] and [respondents] Cerrofer Realty Corporation and Cesar Roque and Lorna Roque. Hence, this Court resolves to grant the prayer for damages against Traders Royal Bank.

"The claims of the [petitioners] as against [respondent] Traders Royal Bank having been established and proved by evidence, judgment is hereby rendered ordering [respondent] Traders Royal Bank to pay [petitioners] actual damage or the market value of the land in question in the sum of P500,000.00; the sum of P70,000.00 as compensatory damages; the sum of P200,000.00 to the heirs of [petitioner] Danilo Chua; and attorney's fees in the sum of P30,000.00."[52]

In the light of the pending issue as to the validity of the sale of the property to the third parties (Cerrofer Realty Corporation and Spouses Roque), the trial court properly withheld judgment on the matter and thus left the prayer for damages as the sole issue for resolution.

To adjudge damages, paragraph (d) of Section 3 of Rule 9 of the Rules of Court provides that a judgment against

a party in default "shall not exceed the amount or be different in kind from that prayed for nor award unliquidated damages." The proscription against the award of unliquidated damages is significant, because it means that the damages to be awarded must be proved convincingly, in accordance with the quantum of evidence required in civil cases.

Unfortunately for petitioners, the grant of damages was not sufficiently supported by the evidence for the following reasons.

First, petitioners were not deprived of their property without cause. As correctly pointed out by the CA, Act No. 3135, as amended, does not require personal notice to the mortgagor.[53] In the present case, there has been no allegation — much less, proof — of noncompliance with the requirement of publication and public posting of the notice of sale, as required by Act No. 3135. Neither has there been competent evidence to show that the price paid at the foreclosure sale was inadequate.[54] To be sure, there was no ground to invalidate the sale.

Second, as previously stated, petitioners have not convincingly established their right to damages on the basis of the purported agreement to repurchase. Without reiterating our prior discussion on this point, we stress that entitlement to actual and compensatory damages must be proved even under Section 3 of Rule 9 of the Rules of Court. The same is true with regard to awards for moral damages and attorney's fees, which were also granted by the trial court.

In sum, petitioners have failed to convince this Court of the cogency of their position, notwithstanding the advantage they enjoyed in presenting their evidence *ex parte*. Not in every case of default by the defendant is the complainant entitled to win automatically.

WHEREFORE, this Petition is hereby DENIED and the assailed Decision and Resolution AFFIRMED. Costs against petitioners.

SO ORDERED.

Ynares-Santiago, Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] The Court of Appeals was included in the Petition as a respondent. However, the CA was omitted by this Court from the title of the case, because it need not be impleaded in petitions for review, under Section 4 of Rule 45 of the Rules of Court.

[2] Rollo, pp. 9-27.

[3] Penned by Justice Renato C. Dacudao and concurred in by Justices Romeo J. Callejo Sr. (then chairperson of the Special Thirteenth Division and now a member of this Court) and Alicia L. Santos (acting member). *Id.*, pp. 29-39.

[4] *Id.*, p. 41.

[5] CA Decision, p. 11; *id.*, p. 39.

[6] CA rollo, pp. 145-152.

[7] The dispositive portion of the Partial Decision reads as follows:

"The claims of the [petitioners] as against [Respondent] Traders Royal Bank having been established and proved by evidence, judgment is hereby rendered ordering [Respondent] Traders Royal Bank to pay [petitioners] actual damage or the market value of the land in question in the sum of P500,000.00; the sum of

P70,000.00 as compensatory damages; the sum of P200,000.00 to the heirs of [Petitioner] Danilo Chua; and attorney's fees in the sum of P30,000.00." (Partial Decision dated February 8, 1993, p. 2; records, p. 173).

[8] CA Decision, pp. 2-5; rollo, pp. 30-33.

[9] Records, pp. 172-173.

[10] CA rollo, pp. 37-41.

[11] Contained in the RTC Decision dated October 28, 1993; records, pp. 263-264.

[12] CA Rollo, pp. 84-87.

[13] Records, pp. 75-82.

[14] Id., pp. 176-183.

[15] CA Decision, p. 7; rollo, p. 35.

[16] The Petition was deemed submitted for decision on March 29, 2005, upon the Court's receipt of respondent's 4-page Memorandum, signed by Atty. Diosdado B. Jimenez of Gonzales Sinense Jimenez & Associates. Petitioners' Memorandum, signed by Atty. Sergio F. Angeles of Angeles & Associates, was received by the Court on May 15, 2003.

[17] Petitioners' Memorandum, pp. 10-17; rollo, pp. 98-105.

[18] Section 1 of Rule 45 of the Rules of Court provides that "x x x. The petition shall raise only questions of law which must be distinctly set forth."

[19] Saguid v. Court of Appeals, 451 Phil. 825, June 10, 2003; Ocampo v. Ocampo, 427 SCRA 545, April 14, 2004; Catapusan v. Court of Appeals, 332 Phil. 586, November 21, 1996. Section 1 of Rule 131 of the Rules of Court provides:

"SECTION 1. Burden of proof. — Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law."

[20] Saguid v. CA, *ibid.* (citing Heirs of Anastacio Fabela v. CA, 362 SCRA 531, August 9, 2001).

[21] Regalado, Remedial Law Compendium, Vol. 1, 7th rev. ed. (1999), p. 169. See also P. T. Cerna Corporation v. CA, 221 SCRA 19, 25, April 6, 1993.

[22] 220 Phil. 588, April 30, 1985 cited in Luxuria Homes, Inc. v. CA, 361 Phil. 989, January 28, 1999.

[23] Pascua v. Florendo, *supra*, pp. 595-596, per Gutierrez, Jr., J.

[24] 66 SCRA 425, August 29, 1975. See also Heirs of Anastacio Fabela v. CA, *supra* at note 20.

[25] Id., pp. 452-453, per Barredo, J.

[26] Vibram Manufacturing Corporation v. Manila Electric Company, 466 SCRA 178, August 9, 2005; Rubiato v. Heirs of Jovito Rubiato, 464 SCRA 296, July 28, 2005; Republic v. CA, 328 Phil. 238, July 12, 1996; Baricuatro Jr. v. Court of Appeals, 382 Phil. 15, 24, February 9, 2000.

[27] Manila Banking Corp. v. Silverio, 466 SCRA 438, August 11, 2005; Yason v. Arciaga, 449 SCRA 458, January 28, 2005; Menchavez v. Torres Jr. 449 SCRA 380, January 26, 2005.

[28] CA Decision, p. 9; rollo, p. 37.

[29] Records, pp. 9-12.

[30] Id., pp. 13-14.

[31] Id., p. 15.

[32] Id., p. 16.

[33] Id., p. 17.

[34] Id., p. 18.

[35] Id., p. 19.

[36] Id., pp. 20-21.

[37] Id., pp. 22-23.

[38] Id., pp. 24-26.

[39] Id., p. 27.

[40] Id., p. 28.

[41] Union Bank of the Philippines v. CA, 412 Phil. 64, June 25, 2001; Castro v. Bague, 359 SCRA 28, June 20, 2001; Ysmael v. CA, 376 Phil. 323, November 16, 1999. Section 28 of Rule 39 of the Rules of Court provides that legal redemption should be made "at any time within one (1) year from the date of the registration of the certificate of sale x x x."

[42] Ibaan Rural Bank, Inc. v. Court of Appeals, 378 Phil. 707, 713, December 17, 1999; Lazo v. Republic Surety & Insurance Co., Inc., 31 SCRA 329, January 30, 1970.

[43] Landrito v. Court of Appeals, 466 SCRA 107, August 9, 2005 (citing Lazo v. Republic Surety & Insurance Co., Inc., supra); Ibaan Rural Bank, Inc. v. Court of Appeals, supra.

[44] Records, p. 18.

[45] Id., p. 195.

[46] Id., p. 19.

[47] Ibid.

[48] Id., p. 15.

[49] Id., p. 16.

[50] Id., p. 17.

[51] "ART. 1256. If the creditor to whom tender of payment has been made refuses without just cause to accept it, the debtor shall be released from responsibility by the consignment of the thing or sum due. x x x."

[52] Partial Decision, p. 2; records, p. 173.

[53] Section 3 of Act No. 3135, as amended, provides as follows:

"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." (See also *Ardiente v. Provincial Sheriff*, 436 SCRA 655, August 17, 2004)

[54] This fact would have been shown by presenting evidence that another bidder had offered to pay a higher price for the property during the bidding.

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