

RPRP VENTURES MANAGEMENT & DEVELOPMENT CORPORATION, PETITIONER, VS. HON. TEOFILO L. GUADIZ, JR., PRESIDING JUDGE, REGIONAL TRIAL COURT OF MAKATI CITY, BRANCH 147; METROPOLITAN B...

G.R. No. 152236. July 28, 2010

Ponente: PERALTA, J.

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PERALTA, J.:

This is a petition for review[1] on certiorari under Rule 45 of the Rules of Court seeking to nullify and set aside the Decision[2] of the Court of Appeals (CA) dated September 4, 2001 and its Resolution[3] dated January 17, 2002.

The antecedent facts are the following:

On September 26, 1997, petitioner was granted a loan in the amount of Forty Three Million (P43,000,000.00) Pesos by Metrobank, for which the former signed a promissory note[4] in favor of the latter. As a security for the said loan, petitioner executed a Deed of Real Estate Mortgage[5] dated September 25, 1997 over a property situated in Makati City[6] in favor of Metrobank. Eventually, the amount due[7] on the loan amounted to P62,619,460.33 by September 20, 1999.

Petitioner defaulted in the payment of the loan obligation; hence, Metrobank filed a petition for extrajudicial foreclosure[8] of the mortgaged real estate property with a notary public, private respondent Atty. Enriqueito Magpantay. The notary public, in a Notice of Sale[9] dated November 12, 1999, scheduled the foreclosure sale of the mortgaged property on December 9, 1999. The said Notice of Sale was published[10] at the Challenger News on November 15, 22, and 29, 1999. In the said auction sale, Metrobank was the highest and only bidder in the amount of P34,877,479.20.[11]

Subsequently, petitioner filed a Complaint[12] for the Annulment of the Extrajudicial Foreclosure Sale and Real Estate Mortgage Contract with Prayer for TRO and Issuance of the Writ of Preliminary Mandatory Injunction dated December 23, 1999 with the trial court.[13] Petitioner contended that the foreclosure sale conducted by the notary public was null and void because of the following: the publication of the Notice of Sale in the Challenger News was not assigned by publication by raffle, which is in violation of Presidential Decree (P.D.) 1079; the Challenger News is not a newspaper of general circulation as defined by the rules; and Metrobank should pay the fees for the filing of a request or application for extrajudicial foreclosure as fixed by Section 7 (c), Rule 141 of the Rules of Court.

In an Order[14] dated March 15, 2000, the trial court denied the application of petitioner, the dispositive portion of which states:

WHEREFORE, in view of the foregoing, the Court, finding the application for the issuance of a writ of preliminary injunction to be not well-taken, hereby denies the same.

SO ORDERED.

Petitioner filed with the CA a Petition for Certiorari[15] dated July 6, 2000, which was dismissed by the same Court in a Resolution[16] dated July 19, 2000 for being time-barred. However, after petitioner filed its Motion for Reconsideration[17] dated August 14, 2000, the CA reinstated the earlier petition in a Resolution[18] dated October 17, 2000.

On September 4, 2001, the CA rendered its Decision,[19] with the following disposition:

WHEREFORE, foregoing premises considered, this petition is DENIED DUE COURSE and, accordingly, DISMISSED.

SO ORDERED.

A Motion for Reconsideration[20] dated September 14, 2001 was subsequently filed, but was eventually denied by the CA in its Resolution[21] dated January 17, 2002.

Thus, the present petition.

In a Resolution[22] dated May 29, 2002, this Court denied the petition for review on certiorari for lack of proof of service of the petition on the lower court concerned and on the adverse parties pursuant to Section 5 (d), Rule 56 and Section 13, Rule 13 of the Rules of Court. Nevertheless, after the petitioner filed its Motion for Reconsideration[23] dated June 26, 2002, this Court, in its Resolution[24] dated July 17, 2002, reinstated the present petition.

In its Manifestation and Motion[25] dated August 16, 2002, the Office of the Solicitor General prayed that it be excused from filing a comment on the petition and from further participating in the case as it involves purely private interests and that no government or public interest is to be represented, to which this Court, in its Resolution[26] dated November 18, 2002, noted and granted the same manifestation and motion.

The arguments raised in the petition are:

The decision of the Court of Appeals [on] September 4, 2001 established that prior to January 15, 2000, the date when A.M. No. 99-10-05-0 took effect, extrajudicial foreclosure sale of real property when conducted by a notary public pursuant to Act No. 3135 is exempted from (1) the payment of the filing fee prescribed in Sec. 7 (c) of Rule 141 of the New Rules of Court, (2) the raffle of the newspapers or publications prescribed in Sec. 2 of P.D. No. 1079 by the executive judge of the Court of First Instance, now the Regional Trial Court where the notice of sale is to be published for three (3) consecutive weeks before the actual sale;

[T]he order of the court a quo in SCA Civil Case No. 99-2139 denying the petitioner's application for the issuance of the writ of preliminary injunction rendered the issues of (1) accurate accounting of obligation by excluding the amount representing penalty on interest which is not stipulated in the promissory note (2) premature foreclosure and the damages caused by the illegal foreclosure moot and academic without the benefit of hearing in the trial court, in violation of both substantive and procedural laws (3) imposed additional obligation on the petitioner which is not included in the real estate mortgage contract.[27]

Before anything else, it must always be remembered that based on the Real Estate Mortgage entered into by petitioner and Metrobank, in case of breach thereof, the sale of the mortgage property shall be governed by Act No. 3135. Therefore, not being contrary to law, morals, good customs and public policy, the principle that contracts are respected as the law between the parties is applicable in the present case. The pertinent portion of the Real Estate Mortgage reads:

(3) If at any time the Mortgagor/Borrower shall fail or refuse to pay the obligations herein secured, or any of

the amortization of such indebtedness when due, or to comply with any of the conditions and stipulations herein agreed, or shall, during the time this mortgage is in force, institute insolvency proceedings or be voluntarily declared insolvent or shall use the proceeds of this loan for purposes other than those specified herein or if this mortgage cannot be recorded in the corresponding Registry of Deeds, then all the obligations secured by this Mortgagee may, at its election, immediately foreclose this mortgage judicially in accordance with the Rules of Court, or extrajudicially in accordance with Act 3135, as amended. x x x[28]

After a careful study of the arguments raised by the petitioner, this Court finds the petition unmeritorious.

Petitioner highly disputes the CA's citing of the case of China Banking Corporation v. Court of Appeals,[29] claiming it to be inapplicable in the present case. According to petitioner, the facts obtaining in the China Bank case are different from the present case. It expounded that in the China Bank case, there was an admission from the mortgagors that they were unable to settle to the fullest their obligation which necessitated the extrajudicial foreclosure. However, as contended by the petitioner, they contested the amount due based on the amortization schedule because it included charges on penalties on interest which was not stipulated in the promissory note; hence, there was no admission on its part that it was unable to settle its obligation. As such, it claims that it was not yet on default when the extrajudicial foreclosure of the mortgaged property took place.

The similarities between the China Bank case and the present case may not be as stark and apparent, but still, the former is not rendered inapplicable to the latter by their faint dissimilarities. Contrary to the assertion of the petitioner that it never admitted its inability to pay its loan and that it was not in default because it merely disputed Metrobank's computation of the charges due, a close reading of the complaint it filed with the lower court categorically shows that it acknowledged its default in the payment of its loan obligation by stating the following:

9. In the meantime, however, defendant Metrobank graciously accommodated plaintiff's several requests for deferments of payments until and after the issue on the computation, particularly the eighteen (18%) percent penalty being charged or imputed on interest is settled.

10. Plaintiff was not contented with the deferments of payment without the issue on accounting being settled by the defendant Metrobank. On "November 6, 1998, plaintiff wrote defendant Metrobank two (2) letters, one letter contained plaintiff's proposal to restructure its loan and request for waiver of charges, while the second letter, reiterated plaintiff to review the statement of account referred to in paragraph 7 and citing reasons therefor.

11. Plaintiff, while awaiting response from the defendant Metrobank, requested the latter on "December 2, 1998 for another extension of ninety (90) days to pay its account in cash and in lieu thereof offered another property in its name consisting of TWENTY-EIGHT THOUSAND EIGHT HUNDRED FIFTY-EIGHT (28,858) SQ. METERS subdivided into FOUR HUNDRED (400) to FIVE HUNDRED (500) SQ. METERS each with individual titles in Tacloban City, with the option to buy back the same.

12. Defendant Metrobank, on January 12, 1999, approved plaintiff's request to restructure its loan account of PESOS FORTY MILLION (P40,000,000.00) for five (5) years inclusive of two (2) years grace period which plaintiff, in its "letter of January 21, 1999, politely declined because of the additional PESOS TEN MILLION THREE HUNDRED FIFTY-FOUR THOUSAND EIGHT HUNDRED EIGHTY-SIX AND SEVENTY-SEVEN CENTAVOS (P10,354,886.77) defendant Metrobank wanted to collect from plaintiff, bringing its total accountability to PESOS FIFTY MILLION THREE HUNDRED FIFTY-FOUR THOUSAND EIGHT HUNDRED EIGHTY-SIX & SEVENTY-SEVEN CENTAVOS (P50,354,886.77).

13. Defendant Metrobank, in its letter of February 1, 1999, informed plaintiff that it has approved another restructuring scheme in the amount of PESOS FORTY-SIX MILLION (P46,000,000.00) of which PESOS SIX MILLION (P6,000,000.00) was not yet matured which came from the defendant Metrobank's Tacloban branch discounting line, which plaintiff politely declined for the second time.

14. Plaintiff, on February 10, 1999, requested defendant Metrobank to appraise its Tacloban property and to reconsider its decision denying the acceptability of the said property by way of dacion en pago.

15. Plaintiff, upon learning of defendant Metrobank's final decision not accept its Tacloban property offered the latter to settle its obligation by way of full dacion en pago on its Dasmariñas property, on March 22, 1999.

16. Defendant Metrobank, however, in its letter of April 21, 1999, informed plaintiff that it was still agreeable to restructure plaintiff's loan account of PESOS FORTY MILLION EIGHT HUNDRED FIFTY THOUSAND (P40.850M) by way of dacion en pago of plaintiff's Dasmariñas property only in the amount of PESOS TWENTY-SIX MILLION (P26,000,000.00) and the remaining amount of PESOS FOURTEEN MILLION EIGHT HUNDRED FIFTY THOUSAND (P14,850,000.00) plus other charges, i.e., interest, past due interest and penalty shall be booked under term loan for five (5) years.

The various and constant requests for deferment of payment and restructuring of loan, without actually paying the amount due, are clear indications that petitioner was unable to settle its obligation. Therefore, the CA did not err in citing the China Bank[30] case wherein this Court ruled that:

Anent the second issue, we find that petitioners are entitled to foreclose the mortgages. In their complaint for accounting with damages pending with the trial court, private respondents averred that:

8. Up to and until February, 1993, PLAINTIFF-CORPORATION had paid to the DEFENDANT-BANK, the amount of THREE HUNDRED FIFTY THOUSAND (P350,000.00) Pesos, Philippine Currency, and was willing to pay the balance in installments of FOUR HUNDRED THOUSAND (P400,000.00) Pesos, Philippine Currency, every month, in the meantime, but the DEFENDANT-BANK refused to accept, demanding instead SEVEN HUNDRED MILLION (P7,000,000.00) Pesos, Philippine Currency, a month.

9. In spite of the expressed willingness and commitment of plaintiffs to pay their obligation in a manner which they could afford, on March 11, 1993, MORTGAGORS and DEFENDANT-CORPORATIONS, each received a Letter of Demand from DEFENDANT-BANK, for the payment of P28,775,615.14 exclusive of interest and penalty evidenced by 11 promissory notes enclosed therein x x x.

10. Upon receipt of the letter, PLAINTIFF-CORPORATION through its President pleaded with the Chairman of the Board of the DEFENDANT-BANK, through whom Defendant-Corporation was transacting business with, to accept its offer of payment of FOUR HUNDRED THOUSAND (P400,000.00) Pesos, Philippine Currency, a month, in the meantime, which was again refused by the said Chairman.

which allegations are a clear admission that they were unable to settle to the fullest their obligation. Foreclosure is valid where the debtors, as in this case, are in default in the payment of their obligation.[31] The essence of a contract of mortgage indebtedness is that a property has been identified or set apart from the mass of the property of the debtor-mortgagor as security for the payment of money or the fulfillment of an obligation to answer the amount of indebtedness, in case of default of payment.[32] It is a settled rule that in a real estate mortgage when the obligation is not paid when due, the mortgagee has the right to foreclose the mortgage and to have the property seized and sold in view of applying the proceeds to the payment of the obligation.[33]

Anent the petitioner's contention that Metrobanks' Petition for Foreclosure of Real Estate Mortgage Contract is subject to the payment of the prescribed legal fees pursuant to Section 7 (c), Rule 141 of the Rules of Court, the same is inaccurate. Section 7 (c), Rule 141 of the Rules of Court requires the payment of docket fees when filing Petitions for Extrajudicial Foreclosure of real and chattel mortgages. However, the said provisions of the law pertains to petitions for foreclosure filed before the Office of the Ex-Officio Sheriff. In the present case, Section 7 (c), Rule 141 of the Rules of Court is inapplicable, because the petition for extrajudicial foreclosure of real property mortgage was filed before a notary public.

Petitioner further argues that the provisions of Section 2 of P.D. 1079, as amended, should have been followed. The said law reads:

Sec. 2. The executive judge of the court of first instance (Regional Trial Court) shall designate a regular working day and a definite time each week during which the said judicial notices or advertisements shall be distributed personally by him for publication to qualified newspapers or periodicals as defined in the preceding section, which distribution shall be done by raffle: Provided, That should the circumstances require that another day be set for the purpose, he shall notify in writing the editors and publishers concerned at least three (3) days in advance of the designated date: Provided, further, That the distribution of the said notices by raffle shall be dispensed with in case only one newspaper or periodical is in operation in a particular province or city.

Respondent Metrobank was not mistaken when it stated that P.D. 1079, as amended, did not apply to the publication of Notices of Sale in extrajudicial foreclosures conducted by notaries public, because the said law was applicable to the publication of Notices of Sale in extrajudicial foreclosures of mortgage conducted by a Sheriff.

Presidential Decree No. 1079, as amended, refers to judicial notices or those notices issued by the Ex-Officio Sheriff and Clerk of Court in extrajudicial foreclosures of mortgage, and a notice of sale issued by a Notary Public is not within the scope of judicial notices.

In connection therewith, as correctly pointed out by the trial court, Administrative Matter No. 99-10-05-0, which prescribes the rules in cases of extrajudicial foreclosure of mortgage and requires the payment of filing fees and the raffling of all notices of public auction in all extrajudicial foreclosures of mortgage, was issued on December 14, 1999 and took effect on January 15, 2000, while the petition for extrajudicial foreclosure of real estate mortgage was filed by Metrobank on October 29, 1999. Consequently, the petition for extrajudicial foreclosure of real estate mortgage filed with the notary public was not yet governed by the said administrative matter when the former was filed.

As to the persistent claim of the petitioner that Metrobank erred in adding penalty on interest in the latter's computation of charges due has been rendered moot and academic by Metrobank's express abandonment of the said charge in the computation of petitioner's total loan obligation. However, despite the non-inclusion of the penalty on interest, petitioner was still unable to pay its entire obligation; thus, necessitating the conduct of the extrajudicial foreclosure of the mortgaged property.

WHEREFORE, the petition for review on certiorari dated April 5, 2002 is hereby DENIED. Consequently, the Decision of the Court of Appeals dated September 4, 2001 and its Resolution dated January 17, 2002 are hereby AFFIRMED in toto.

SO ORDERED.

Carpio, (Chairperson), Nachura, Abad, and Mendoza, JJ., concur

[1] Rollo, pp. 26.

[2] Penned by Associate Justice Mercedes Gozo-Dadole, with then Presiding Justice Ma. Alicia Austria-Martinez and Associate Justice Portia Aliño-Hormachuelos, concurring; *id.* at 35-41.

[3] *Id.* at 43-44.

[4] CA rollo, p. 154.

[5] *Id.* at 156-159.

- [6] Covered by TCT No. 202513 containing an area of 1,021 sq. m.; id. at 160-162.
- [7] Per statement of account, id. at 177.
- [8] CA rollo, pp. 54-57.
- [9] Id. at 118-119.
- [10] Id. at 180-181.
- [11] Id. at 182-183.
- [12] Id. at 43-53.
- [13] RTC of Makati City, Branch 147 and docketed as Civil Case No. 99-2139.
- [14] CA rollo, pp. 34-42.
- [15] Id. at 2-30.
- [16] Id. at 122-123.
- [17] Id. at 124-139.
- [18] Id. at 216-217.
- [19] Id. at 329-335.
- [20] Id. at 339-353.
- [21] Id. at 416-417.
- [22] Rollo, p. 45.
- [23] Id. at 46-55.
- [24] Id. at 55.
- [25] Id. at 59-63.
- [26] Id. at 84.
- [27] Id. at 13, 19.
- [28] CA rollo, p. 195.
- [29] G.R. No. 121158, December 5, 1996, 265 SCRA 327.
- [30] Id. at 340.
- [31] *Cortes v. Intermediate Appellate Court*, G.R. No. 73678, July 21, 1989, 175 SCRA 545, 548.
- [32] *Fiestan v. Court of Appeals*, G.R. No. 81552, May 28, 1990, 185 SCRA 751, 757.
- [33] *State Investment House, Inc. v. Court of Appeals*, G.R. No. 99308, November 13, 1992, 215 SCRA 734, 744, citing *Commodity Financing Co., Inc. v. Jimenez*, 91 SCRA 57 (1979).

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