

UNION BANK OF THE PHILIPPINES, PETITIONER, VS. HON. COURT OF APPEALS AND D’ROSSA, INCORPORATED, RESPONDENTS.

G.R. NO. 164910. September 30, 2005

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition for review on certiorari[1] seeks to set aside the February 23, 2004 Decision[2] of the Court of Appeals in CA-G.R. CV No. 66407 which reversed and set aside the Decision[3] of the Regional Trial Court of Makati City, Branch 141 in Civil Case No. 96-1053; and its August 13, 2004,[4] resolution denying reconsideration thereof.

In a memorandum of agreement dated May 27, 1992, D'Rossa Incorporated (DRI) agreed to mortgage its parcels of land covered by TCT Nos. S-24740 and S-24747 in favor of Union Bank of the Philippines (Union Bank) as security for the credit facility of Josephine Marine Trading Corporation (JMTC). JMTC availed P3 million from the credit line.

Subsequently, Union Bank increased the credit facility of JMTC to P27 million, from which JMTC availed US\$700,503.64 or P18,318,170.18. Upon JMTC's failure to pay its obligation, Union Bank instituted foreclosure proceedings on DRI's properties.

On September 20, 1996, DRI's properties were auctioned where Union Bank was declared the highest bidder for P15,300,000.00.[5]

On February 26, 1997, DRI filed a supplemental complaint seeking to declare the public sale as null. It claimed that its liability is only P3 million which was the liability incurred by JMTC under its first agreement with Union Bank. However, Union Bank alleged that DRI was liable to JMTC's total outstanding obligations, regardless of whether it was incurred during or subsequent to the first agreement.

On December 27, 1999, the trial court rendered its decision, the dispositive portion of which states:

WHEREFORE, the complaint is hereby dismissed for lack of merit. The plaintiff is ordered to pay the defendant UBP, the sum of P250,000.00 as and for attorney's fees and the costs.

SO ORDERED.[6]

On appeal, the Court of Appeals reversed the decision of the trial court. While it upheld Union Bank's right to foreclose, it found that DRI's mortgage liability is pegged at P3 million and which was later amended and increased to P8.61 million. It ruled that DRI could not be held liable for more than P8.61 million[7] even if JMTC availed more than this amount. It also noted that the date of the public sale as contained in the notice varies with the actual date of sale. As such, it declared as null the foreclosure sale because a foreclosure sale carried out on a day different from the published notice is a total nullity.[8]

The dispositive portion of the Court of Appeals' decision reads:

WHEREFORE, the appealed Decision is REVERSED and SET ASIDE, and another is RENDERED:

- (a) Declaring appellant DRI's mortgage liability to be P8.61 Million only;
- (b) Declaring the foreclosure of appellant DRI's properties covered by TCTs No. S-24740 and No. S-24747 NULL and VOID ab initio;
- (c) Ordering the Register of Deeds of Rizal or Makati City to CANCEL appellee UBP's TCTs No. 212659 and No. 212660, and to RESTORE appellant DRI's TCTs No. S-24740 and No. S-24747; and
- (d) Ordering the appellee UBP to PAY appellant DRI P100,000.00 for and as attorney's fees plus the costs of suit.

SO ORDERED.[9]

Union Bank's motion for reconsideration was denied hence this petition raising the following issues:[10]

I.

Whether or not the Court of Appeals through its former Special Eleventh Division committed reversible error in declaring as null and void the foreclosure sale of private respondent D'Rossa's mortgaged properties then covered by TCT Nos. S-24740 and S-24747 notwithstanding its earlier ruling through the former Fifth Division in CA-G.R. SP No. 41694 sustaining the validity of the very same foreclosure proceedings covering the exact same properties.

II.

Whether or not the Court of Appeals committed reversible error when it held that there was a "variance" between the notice regarding the date of foreclosure on 22 July 1996 and that of the actual date of foreclosure sale covering the same real properties on 20 September 1996.

III.

Whether or not the Court of Appeals committed reversible error when it held that D'Rossa's liability to Union Bank is limited to only P8.61 Million even though the actual bid price tendered by Union Bank at the foreclosure sale of D'Rossa's mortgaged properties to cover the unpaid obligation of the borrower amounted to P15.3 Million.

IV.

Whether or not the Court of Appeals committed reversible error when in holding as null and void the foreclosure of the mortgaged properties then covered by TCT Nos. S-24740 and S-24747 notwithstanding the earlier ruling of Honorable Court of Appeals, Fifth (5th) Division in CA-G.R. SP No. 41694 sustaining the validity of the very same foreclosure proceedings herein involved covering the same properties.

V.

Whether or not the Court of Appeals committed reversible error in ordering the cancellation of TCT Nos. 212659 and 212660 now registered under the name of petitioner Union Bank and the corresponding restoration of D'Rossa's TCT Nos. S-24740 and S-24747.

VI.

Whether or not the Court of Appeals committed reversible error in holding petitioner Union Bank liable for attorney's fees and costs of suit.

The foregoing issues can be summed up into: (a) whether the Court of Appeals erred in holding that the liability

of DRI is limited only to P8.61 million; and (b) whether the Court of Appeals erred in finding the foreclosure sale of DRI's mortgaged properties as null for lack of republication of the notice of sale.

The pertinent provisions of the Real Estate Mortgage provide:

Section 1. Secured Obligations. – The obligations secured by this Mortgage (the "Secured Obligations") are the following:

- a) All the obligations of the Borrower and/or the Mortgagor under: (i) the Notes, the Agreement and this Mortgage; (ii) any and all instruments or documents issued upon the renewal, extension, amendment or novation of the Notes, the Agreement and this Mortgage, irrespective of whether such obligations as renewed, extended, amended or novated are in the nature of new, separate or additional obligations; and (iii) any and all instruments or documents issued pursuant to the Notes, the Agreement and this Mortgage;
- b) All other obligations of the Borrower and/or the Mortgagor in favor of the Mortgagee, whether presently owing or hereinafter incurred and whether or not arising from or connected with the Agreement, the Notes and/or this Mortgage; and
- c) Any and all expenses which may be incurred in collecting any and all of the above and in enforcing any and all rights, powers and remedies of the Mortgagee under this Mortgage.[11] (Emphasis supplied)

The foregoing provisions clearly show the parties' intent to constitute DRI's real estate properties as continuing securities, liable for the current as well as the future obligations of JMTC. Indeed, a mortgage liability is usually limited to the amount mentioned in the contract, but where the intent of the contracting parties is manifest that the mortgage property shall also answer for future loans or advancements, the same is valid and binding between the parties.[12] In this case, DRI expressly agreed to secure all the obligations of JMTC, whether presently owing or subsequently incurred. Thus, its liability is not limited to P8.61 million only.

In *Prudential Bank v. Don A. Alviar and Georgia B. Alviar*,^[13] we referred to this provision as "blanket mortgage clause" or "dragnet clause". Thus:

A "blanket mortgage clause," also known as a "dragnet clause" in American jurisprudence, is one which is specifically phrased to subsume all debts of past or future origins. Such clauses are "carefully scrutinized and strictly construed." Mortgages of this character enable the parties to provide continuous dealings, the nature or extent of which may not be known or anticipated at the time, and they avoid the expense and inconvenience of executing a new security on each new transaction. A "dragnet clause" operates as a convenience and accommodation to the borrowers as it makes available additional funds without their having to execute additional security documents, thereby saving time, travel, loan closing costs, costs of extra legal services, recording fees, et cetera. Indeed, it has been settled in a long line of decisions that mortgages given to secure future advancements are valid and legal contracts, and the amounts named as consideration in said contracts do not limit the amount for which the mortgage may stand as security if from the four corners of the instrument the intent to secure future and other indebtedness can be gathered.

Even if DRI is considered as an accommodation mortgagor only, its liability would still exceed P8.61 million. It is well to note that DRI, through its President, Rose D. Teodoro, agreed to secure not only the present obligations of JMTC but also those that may be incurred after the execution of the mortgage contract. DRI also actively participated in facilitating the increase of JMTC's credit facility.^[14]

We draw attention to a letter sent by DRI to Union Bank after the renewal and increase of JMTC's credit line, the pertinent part of which is hereby quoted:

Dear Mr. Katigbak,

We would like to thank you and your Executive Committee in approving the renewal and increase of our credit facilities for the operations of Josephine Marine Trading Corporation.

We are herewith submitting the following documents in relation to the above mentioned credit line:

- Sec. Cert. (Stockholder's Special Meeting) (2copies)
- Sec. Cert. (Board of DIRECTORS Special Meeting) (2 copies)
- Union Bank Real Estate Mortgage (signed)
- Amendment to the Real Estate Mortgage (signed)

We have also taken note that the approval was in Sept. 30, 1994 and expires on Sept. 30, 1995. We apologize for the delay in forwarding the said documents and hope that effectivity of the accomodation could be extended.

Thank you.

Very truly yours,

(sgd.)

ROSE D. TEODORO

President

Encl. as stated[15]

It appears from the tenor of the foregoing letter that, more than just being a third-party mortgagor, DRI was actively involved in the business and operations of JMTC. As observed by the trial court:

[DRI] could not feign innocence on the subsequent renewal and increase of credit facility to JMTC because it even wrote a letter dated 26 January 1995 (Exhibit "8") to defendant UBP, signed by its President Rose D. Teodoro...

...

Parenthetically, Josephine Marine Trading Corporation and D'Rossa Incorporated are family owned corporations of the Teodoros.[16]

Likewise, the evidence presented during the proceedings in the trial court reveal that DRI acknowledged and consented to the renewal and increase of the credit facilities of JMTC.[17] Thus, by agreeing to secure JMTC's future loans or advancements with its real properties, DRI is estopped from questioning the foreclosure proceedings conducted upon the failure of JMTC to pay its obligations to Union Bank.

Concerning DRI's allegation of lack of republication, the same is without factual or legal basis. Other than its bare allegations, DRI did not present proof that there was no republication of the notice of sale. On the other hand, Union Bank presented a Certificate of Posting[18] executed by Sheriff Norberto Magsajo and the Affidavit of Publication by Veronica Arguilla, the General Manager of Pilipino Newslite, attesting to the publication of the notice on August 29, September 5 and 12, 1996.[19] The original issues of Pilipino Newslite where the notice was republished were also attached in the records. Verily, in the face of such overwhelming evidence, there is no reason why the regularity and validity of the mortgage foreclosure should not be upheld as the trial court did.

Foreclosure proceedings have in their favor the presumption of regularity and the burden of evidence to rebut the same is on the party that seeks to challenge the proceedings.[20] Likewise, the presumption of regularity in the performance of duty applies in this case in favor of the Sheriff.[21] These presumptions have not been rebutted by

convincing and substantial evidence by DRI.

It is settled that the principal object of a notice of sale is not so much to notify the mortgagor as to inform the public in general of the nature and condition of the property to be sold, and of the time, place, and terms of the sale.[22] In fact, personal notice to the mortgagor in extrajudicial foreclosure proceedings is not even necessary, unless stipulated.[23] Yet it cannot be argued that DRI was left in the dark regarding the exact date of the sale. In a letter dated September 19, 1996, its counsel wrote the Sheriff of Makati requesting that the sale on September 20, 1996 be held in abeyance in view of their pending petition for the issuance of a temporary restraining order. This proves that DRI knew of the scheduled sale and cannot therefore claim to have been deprived of the opportunity to participate therein.

Lastly, the issue of republication was never raised in the trial court or in the appellate court proceedings. It is well settled that no issue may be raised on appeal unless it has been passed upon by the lower court for consideration.[24] And where the Court of Appeals went beyond the issues of the case or where its findings of facts are conclusions without citations of specific evidence on which they are based, we are compelled to review the facts of the case.[25] We find sufficient cause to believe that the requirement of republication was duly complied with and to uphold the validity of the foreclosure sale.

WHEREFORE, the instant petition is GRANTED. The Decision of the Court of Appeals dated February 23, 2004 and its Resolution dated August 13, 2004 in CA-G.R. CV No. 66407 are REVERSED and SET ASIDE. The Decision of the trial court dated December 27, 1999 in Civil Case No. 96-1053 is AFFIRMED in toto.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Quisumbing, Carpio, and Azcuna, JJ., concur.

[1] Rollo, pp. 13-50.

[2] Id. at 52-70. Penned by Associate Justice Salvador J. Valdez, Jr., as concurred in by Associate Justices Andres B. Reyes, Jr. and Arturo D. Brion.

[3] Id. at 98-103. Penned by Judge Manuel D. Victorio.

[4] Id. at 72-83.

[5] Id. at 133.

[6] Id. at 103.

[7] Id. at 62, 65, 67 and 70.

[8] Id. at 68.

[9] Id. at 70.

[10] Id. at 22-23.

[11] Records, Volume II, p. 517.

[12] Ajax Marketing & Development Corporation v. Court of Appeals, G.R. No. 118585, September 14, 1995, 248 SCRA 222, 230; see also Mojica v. Court of Appeals, G.R. No. 94247, September 11, 1991, 201 SCRA 517; Arriola v. Bank of the Philippine Islands, G.R. No. 94385, July 18, 1991, 199 SCRA 435; Lim Julian v. Lutero, 49 Phil. 703 (1926).

[13] G.R. No. 150197, July 28, 2005.

[14] Records, Volume II, p. 519.

[15] Id. at 539.

[16] Rollo, p. 102.

[17] TSN, Rose D. Teodoro, January 26, 1998, pp. 53-54.

[18] Rollo, p. 310.

[19] Id. at 311.

[20] Cristobal v. Court of Appeals, 384 Phil. 807, 815 (2000).

[21] De Robles v. Court of Appeals, G.R. No. 128053, June 10, 2004, 431 SCRA 566, 569.

[22] PNB v. Nepomuceno Productions, Inc., 442 Phil. 655, 663-664 (2002).

[23] PNB v. Spouses Rabat, 398 Phil. 654, 668 (2000).

[24] Manila Bay Club Corp. v. CA, 319 Phil. 413, 420 (1995); see also Lopez Realty, Inc. v. Fontecha, 317 Phil. 216, 226 (1995).

[25] Manila Memorial Park Cemetery, Inc. v. Linsangan, G.R. No. 151319, November 22, 2004, 443 SCRA 377, 389.

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