

## **PHILIPPINE NATIONAL BANK, PETITIONER, VS. SPOUSES TOMAS CABATINGAN AND AGAPITA EDULLANTES REPRESENTED BY RAMIRO DIAZ AS THEIR ATTORNEY-IN-FACT, RESPONDENTS.**

*G.R. No. 167058. July 09, 2008*

Ponente: CORONA, J.

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### **CORONA, J.:**

Respondent spouses Tomas Cabatingan and Agapita Edullantes obtained two loans, secured by a real estate mortgage,[1] in the total amount of P421,200[2] from petitioner Philippine National Bank. However, they were unable to fully pay their obligation despite having been granted more than enough time to do so.[3] Thus, on September 25, 1991, petitioner extrajudicially foreclosed on the mortgage pursuant to Act 3135.[4]

Thereafter, a notice of extrajudicial sale[5] was issued stating that the foreclosed properties would be sold at public auction on November 5, 1991 between 9:00 a.m. and 4:00 p.m. at the main entrance of the office of the Clerk of Court on San Pedro St., Ormoc City.

Pursuant to the notice, the properties were sold at public auction on November 5, 1991. The auction began at 9:00 a.m. and was concluded after 20 minutes with petitioner as the highest bidder.[6]

On March 16, 1993, respondent spouses filed in the Regional Trial Court (RTC) of Ormoc City, Branch 12 a complaint for annulment of extrajudicial foreclosure of real estate mortgage and the November 5, 1991 auction sale.[7] They invoked Section 4 of Act 3135 which provides:

Section 4. The sale shall be made at public auction, between the hours of nine in the morning and four in the afternoon, and shall be under the direction of the sheriff of the province, the justice or auxiliary justice of peace of the municipality in which such sale has to be made, or of a notary public of said municipality, who shall be entitled to collect a fee of Five pesos for each day of actual work performed, in addition to his expenses. (emphasis supplied)

Petitioners claimed that the provision quoted above must be observed strictly. Thus, because the public auction of the foreclosed properties was held for only 20 minutes (instead of seven hours as required by law), the consequent sale was void.

On November 4, 2004, the RTC issued an order[8] annulling the November 5, 1991 sale at public auction. It held:

[T]he rationale behind the holding of auction sale between the hours of 9:00 in the morning and 4:00 in the afternoon of a particular day as mandated in Section 4 of Act 3135 is to give opportunity to more would-be bidders to participate in the auction sale thus giving the judgment-debtor more opportunity to recover the value of his or her property subject of the auction sale.

Petitioner moved for reconsideration but it was denied in an order dated February 7, 2005.[9] Hence, this petition.

The issue here is whether a sale at public auction, to be valid, must be conducted the whole day from 9:00 a.m.

until 4:00 p.m. of the scheduled auction day.

Petitioner contends that the RTC erred in interpreting Section 4 of Act 3135. The law only prohibits the conduct of a sale at any time before nine in the morning and after four in the afternoon. Thus, a sale held within the intervening period (i.e., at any time between 9:00 a.m. and 4:00 p.m.), regardless of duration, is valid.

We grant the petition.

We note that neither the previous rule (Administrative Order No. 3)[10] nor the current rules (A.M. No. 99-10-05-O, as amended, and the guidelines for its enforcement, Circular No. 7-2002)[11] governing the conduct of foreclosure proceedings provide a clear answer to the question at hand.

Statutes should be sensibly construed to give effect to the legislative intention.[12] Act 3135 regulates the extrajudicial sale of mortgaged real properties[13] by prescribing a procedure which effectively safeguards the rights of both debtor and creditor. Thus, its construction (or interpretation) must be equally and mutually beneficial to both parties.

Section 4 of Act 3135 provides that the sale must take place between the hours of nine in the morning and four in the afternoon. Pursuant to this provision, Section 5 of Circular No. 7-2002 states:

Section 5. Conduct of extrajudicial foreclosure sale—

- The bidding shall be made through sealed bids which must be submitted to the Sheriff who shall conduct the sale between the hours of 9 a.m. and 4 p.m. of the date of the auction (Act 3135, Sec. 4).[14] The property mortgaged shall be awarded to the party submitting the highest bid and, in case of a tie, an open bidding shall be conducted between the highest bidders. Payment of the winning bid shall be made in either cash or in manager's check, in Philippine Currency, within five (5) days from notice. (emphasis supplied)

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A creditor may foreclose on a real estate mortgage only if the debtor fails to pay the principal obligation when it falls due.[15] Nonetheless, the foreclosure of a mortgage does not ipso facto extinguish a debtor's obligation to his creditor. The proceeds of a sale at public auction may not be sufficient to extinguish the liability of the former to the latter.[16] For this reason, we favor a construction of Section 4 of Act 3135 that affords the creditor greater opportunity to satisfy his claim without unduly rewarding the debtor for not paying his just debt.

The word "between" ordinarily means "in the time interval that separates." [17] Thus, "between the hours of nine in the morning and four in the afternoon" merely provides a time frame within which an auction sale may be conducted. Therefore, a sale at public auction held within the intervening period provided by law (i.e., at any time from 9:00 a.m. until 4:00 p.m.) is valid, without regard to the duration or length of time it took the auctioneer to conduct the proceedings.

In this case, the November 5, 1991 sale at public auction took place from 9:00 a.m. to 9:20 a.m. Since it was conducted within the time frame provided by law, the sale was valid.

WHEREFORE, the petition is hereby GRANTED. The November 4, 2004 and February 7, 2005 orders of the Regional Trial Court of Ormoc City, Branch 12 in Civil Case No. 3111-0 are REVERSED and SET ASIDE.

**SO ORDERED.**

Puno, C.J., (Chairperson), Carpio, Azcuna, and Leonardo-De Castro, JJ., concur.

[1] Respondent spouses mortgaged the following properties:

- Lot No. 10650 in the Municipality of Kananga, Leyte covered by TCT No. 168;
- Lot No. 10654 in the Municipality of Kananga, Leyte covered by OCT No. P-590;
- Lot No. 10653 in the Municipality of Kananga, Leyte covered by TCT No. 2173;
- Lot No. 10645 in the Municipality of Kananga, Leyte covered by TCT No. 220;
- Lot No. 7912 in Brgy. Valencia, Ormoc City covered by TCT No. 11664 and
- Lot No. 6550 in Brgy. Valencia, Ormoc City covered by TCT No. 6559.

[2] Respondents obtained the following loans:

Year

Amount

1973

P 46,200

1977

375,000

TOTAL

P 421,200

[3] While petitioner failed to explain how respondent spouses' obligation ballooned to P1,990,421.21 at the time of foreclosure (excluding interest at 28% p.a., penalties and other bank charges, attorney's fees and expenses for foreclosure), respondent spouses failed to contest petitioner's claim. Thus, they are deemed to have admitted such as the amount of their liability to petitioner.

[4] An Act to Regulate the Sale of Property under Special Powers Inserted In or Annexed to Real Estate Mortgages. See also Administrative Order No. 3 dated October 19, 1984. (This issuance was superseded by A.M. No. 99-10-05-0, as amended.)

[5] Dated October 3, 1991.

[6] On March 22, 1992, a certificate of sale was issued to petitioner. This certificate was registered in the Registry of Deeds of the Province of Leyte on May 22, 1992. However, it appears (based on the records of this case) that no writ of possession was issued to petitioner.

[7] Docketed as Civil Case No. 3111-0.

[8] Penned by Judge Francisco C. Gedorio, Jr. Annex "A" of the petition. Rollo, pp. 29-31.

[9] Annex "B" of the petition, id., p. 32.

[10] Supra note 4.

[11] Dated April 22, 2002.

[12] See *Cosico, Jr. v. National Labor Relations Commission*, 338 Phil. 1080, 1089 (1997).

[13] Luna v. Encarnacion, 92 Phil. 531, 534 (1952).

[14] Contra Circular No. 7-2002, Sec. 4(a) which provides:

Sec. 4. The Sheriff to whom the application for extra-judicial foreclosure of mortgage was raffled shall do the following:

a. Prepare a Notice of Extrajudicial Sale using the following form:

**"NOTICE OF EXTRA-JUDICIAL SALE"**

"Upon extra-judicial petition for sale under Act 3135/1508 filed \_\_\_\_\_ against (name and address of Mortgagor/s) to satisfy the mortgage indebtedness which as of \_\_\_\_\_ amounts to P \_\_\_\_\_, excluding penalties, charges, attorney's fees and expenses of foreclosure, the undersigned or his duly authorized deputy will sell at public auction on (date of sale) \_\_\_\_\_ at 10:00 A.M. or soon thereafter at the main entrance of the \_\_\_\_\_ (place of sale) to the highest bidder, for cash or manager's check and in Philippine Currency, the following property with all its improvements, to wit:"

"(Description of Property)"

"All sealed bids must be submitted to the undersigned on the above stated time and date."

"In the event the public auction should not take place on the said date, it shall be held on \_\_\_\_\_, \_\_\_\_\_ without further notice."

\_\_\_\_\_ (date)

**"SHERIFF"**

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[15] de Leon, COMMENT AND CASES ON CREDIT TRANSACTIONS, 2002 ed., 424-425 (citations omitted).

[16]Id., pp. 437-439 (citations omitted).

[17] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, 1993 ed., 209.

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