

PHILIPPINE SAVINGS BANK, PETITIONER, VS. SPOUSES DIONISIO GERONIMO AND CARIDAD GERONIMO, RESPONDENTS.

G.R. No. 170241. April 19, 2010

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This petition for review [1] assails the 30 August 2005 Decision[2] and 3 November 2005 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 66672. The Court of Appeals reversed the decision of Branch 121 of the Regional Trial Court of Caloocan City, National Capital Region (trial court) by declaring void the questioned extrajudicial foreclosure of real estate mortgage for non-compliance with the statutory requirement of publication of the notice of sale.

The Facts

On 9 February 1995, respondents Spouses Dionisio and Caridad Geronimo (respondents) obtained a loan from petitioner Philippine Savings Bank (petitioner) in the amount of P3,082,000, secured by a mortgage on respondents' land situated in Barrio Talipapa, Caloocan City and covered by Transfer Certificate of Title No. C-50575.[4] Respondents defaulted on their loan, prompting petitioner to initiate the extra-judicial foreclosure of the real estate mortgage. At the auction sale conducted on 29 March 1996, the mortgaged property was sold to petitioner,[5] being the highest bidder, for P3,000,000. Consequently, a Certificate of Sale was issued in favor of petitioner.[6]

Claiming that the extrajudicial foreclosure was void for non-compliance with the law, particularly the publication requirement, respondents filed with the trial court a complaint for the annulment of the extrajudicial foreclosure.[7]

The trial court sustained the validity of the extrajudicial foreclosure, and disposed of the case as follows:

WHEREFORE, premises considered, the instant Complaint for Annulment of Foreclosure of Mortgage and Damages is hereby DISMISSED for lack of merit.

SO ORDERED.[8]

On appeal, the Court of Appeals held:

WHEREFORE, the assailed decision dated 26 November 1999 of the Regional Trial Court of Caloocan City is REVERSED and SET ASIDE. The Extrajudicial Foreclosure of Mortgage conducted on 29 March 1996 is declared NULL and VOID.

SO ORDERED.[9]

The Court of Appeals denied petitioner's motion for reconsideration.

Hence, this petition.

The Ruling of the Trial Court

The trial court held that "personal notice on the mortgagor is not required under Act No. 3135." All that is required is "the posting of the notices of sale for not less than 20 days in at least three public places in the municipality or city where the property is situated, and publication once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city, if the property is worth more than four hundred pesos."

The trial court further ruled there was compliance with the statutory publication requirement. Since the affidavit of publication was excluded as petitioner's evidence, the trial court relied instead on the positive testimony of Deputy Sheriff Alberto Castillo, that he caused the publication of the Notice of Sale, in holding there was publication of the notice of sale in a newspaper of general circulation. In relation to this, the trial court cited the presumption of regularity in the performance of official duty. The trial court found that respondents, as plaintiffs, failed to discharge their burden of proving petitioner's alleged non-compliance with the requisite publication. The trial court stated that the testimony of respondents' witness, a newsstand owner, "that he has never sold Ang Pinoy newspaper can never lead to the conclusion that such publication does not exist."

The Ruling of the Court of Appeals

The Court of Appeals reversed the ruling of the trial court.

The Court of Appeals found no sufficient evidence to prove that Ang Pinoy is a newspaper of general circulation in Caloocan City. In a Resolution dated 2 February 2005, the Court of Appeals required the then Executive Judge of the Regional Trial Court of Caloocan City to inform the appellate court of the following facts:

- If Ang Pinoy newspaper is a newspaper of general circulation particularly for the years 1995 and 1996; and
- If there was compliance with Sec. 2 of P.D. No. 1079 which provides:

"The executive judge of the court of first instance 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 x x x, which distribution shall be done by raffle." [10]

Executive Judge Victoria Isabel A. Paredes (Executive Judge Paredes) complied with the directive by stating that:

a)

Ang Pinoy newspaper is not an accredited periodical in Caloocan City. Hence, we are unable to categorically state whether it is a newspaper of general circulation at present or for the years 1995 and 1996 (Certification marked as Annex "A")

b)

Sec. 2, P.D. No. 1079 is being observed and complied with in that the raffle of judicial notices for publication, is a permanent agenda item in the regular raffle with the RTC, Caloocan City, holds every Monday at 2 o'clock in the afternoon at the courtroom of RTC, Branch 124 (Certification marked as Annex "B"); and

c)

We have no knowledge on whether Ang Pinoy was included in the raffles conducted in 1995 and 1996, as we do not have the case record where the information may be verified. [11]

The Court of Appeals concluded that, based on the compliance of Executive Judge Paredes, Ang Pinoy is not a newspaper of general circulation in Caloocan City. Therefore, the extrajudicial foreclosure is void for non-compliance with the requirement of the publication of the notice of sale in a newspaper of general circulation.

The Issue

Basically, the issue in this case is whether the extra-judicial foreclosure is void for non-compliance with the publication requirement under Act No. 3135.

The Ruling of the Court

The petition lacks merit.

Section 3 of Act No. 3135[12] reads:

SECTION 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. (Emphasis supplied)

Petitioner claims that it complied with the above provision in foreclosing extrajudicially the subject real estate mortgage. To buttress its claim, petitioner presented the testimony of Deputy Sheriff Alberto Castillo of the trial court, the pertinent portion of which states:

ATTY. DAVIS:

Do you remember having come across a certain property owned by spouses Geronimo covered by TCT No. 50576 of the Register of Deeds of Caloocan City?

x x x x

A.

Yes, sir.

ATTY. DAVIS:

Q.

In what connection?

A.

In connection with the extra judicial foreclosure filed by the PS Bank, sir.

x x x x

Q.

When this was assigned to you what action did you take thereon?

A.

I prepared the notice of sale having published in the newspaper which the executive judge awarded it. Sent notice to the said parties and posted it to the three conspicuous places of Caloocan City, sir.

Q.

You mentioned about your issuance of Notice of Sale I am referring you now to the document previously

marked as Exhibit "6." What relation is this if any to the one you have mentioned?

A.

This is the Notice of Sale I have prepared, sir.

Q.

Now you also mentioned that you have caused the publication of this Notice of Sheriff's Sale to a newspaper of general circulation, do you remember what newspaper it was?

A.

Ang Pinoy, sir.

Q.

How come that this newspaper was selected for purposes of publication?

A.

It was the executive judge who awarded that publication, sir.

Q.

How do you know particularly that this notice was published in the newspaper?

A.

That during the auction sale the mortgagee bank presented affidavit of publication, sir.[13]

On the other hand, respondents dispute the existence of the publication of the notice of sale. Assuming that the notice of sale was published, respondents contend that Ang Pinoy, where it was published, is not a newspaper of general circulation. To bolster their claim of non-publication, respondents offered the testimony of Danilo Magistrado, a newsstand owner, which pertinently states:

ATTY. SAYA:

Do you know by chance the Pinoy Newspaper?

ATTY. DAVIS:

No basis.

COURT:

Objection overruled. Witness may answer.

A.

None, sir. I do not sell Pinoy Newspaper, sir.

ATTY. SAYA:

Why do you say that you do not know Pinoy Newspaper?

A.

From the time I sold newspapers, sir, I have not seen Pinoy Newspaper.

ATTY. SAYA:

That would be all, your Honor.

Before resolving the principal issue, we must point out the requirement of accreditation was imposed by the Court only in 2001, through A.M. No. 01-1-07-SC or the Guidelines in the Accreditation of Newspapers and Periodicals Seeking to Publish Judicial and Legal Notices and Other Similar Announcements and in the Raffle Thereof.[14] The present case involves an extrajudicial foreclosure conducted in 1996; thus, there were no such guidelines in effect during the questioned foreclosure. At any rate, the accreditation by the Executive Judge is not decisive of whether a newspaper is of general circulation.[15]

It is settled that for the purpose of extrajudicial foreclosure of mortgage, the party alleging non-compliance with the requisite publication has the burden of proving the same.[16] In this case, respondents presented the testimony of a newsstand owner to prove that Ang Pinoy is not a newspaper of general circulation. However, this particular evidence is unreliable, as the same witness testified that he sells newspapers in Quezon City, not in Caloocan City, and that he is unaware of Ang Pinoy newspaper simply because he is not selling the same and he had not heard of it. His testimony states:

Q.

Where is this place that you traditionally or usually sell newspaper?

A.

Corner of A. Bonifacio and 6[th] Avenue.

Q.

This is in Quezon City?

A.

Yes, sir.

Q.

Not in Caloocan?

A.

In Quezon City, sir.

x x x x

COURT:

Clarificatory question.

Q.

You said that there is no Pinoy magazine simply because you are not selling Pinoy magazine?

A.

Yes, your Honor.

Q.

But you are not certain that there is really no Pinoy magazine?

COURT:

But have you heard about Pinoy magazine or Pinoy newspaper?

A.

I have not heard, your Honor.[17]

Notwithstanding, petitioner could have easily produced the affidavit of publication and other competent evidence (such as the published notices) to refute respondents' claim of lack of publication of the notice of sale. In *Spouses Pulido v. Court of Appeals*,^[18] the Court held:

While it may be true that the party alleging non-compliance with the requisite publication has the burden of proof, still negative allegations need not be proved even if essential to one's cause of action or defense if they constitute a denial of the existence of a document the custody of which belongs to the other party.

In relation to the evidentiary weight of the affidavit of publication, the Court ruled in *China Banking Corporation v. Spouses Martir* ^[19] that the affidavit of publication executed by the account executive of the newspaper is prima facie proof that the newspaper is generally circulated in the place where the properties are located.^[20]

In the present case, the Affidavit of Publication or Exhibit "8," although formally offered by petitioner, was excluded by the trial court for being hearsay.^[21] Petitioner never challenged the exclusion of the affidavit of publication. Instead, petitioner relies solely on the testimony of Deputy Sheriff Alberto Castillo to prove compliance with the publication requirement under Section 3 of Act No. 3135. However, there is nothing in such testimony to clearly and convincingly prove that petitioner complied with the mandatory requirement of publication. When Sheriff Castillo was asked how he knew that the notice of sale was published, he simply replied that "during the auction sale the mortgagee bank presented the affidavit of publication."^[22] Evidently, such an answer does not suffice to establish petitioner's claim of compliance with the statutory requirement of publication. On the contrary, Sheriff Castillo's testimony reveals that he had no personal knowledge of the actual publication of the notice of sale, much less the extent of the circulation of *Ang Pinoy*.

Moreover, the Court notes that *Ang Pinoy* is a newspaper of general circulation printed and published in Manila, not in Caloocan City where the mortgaged property is located, as indicated in the excluded Affidavit of Publication. This is contrary to the requirement under Section 3 of Act No. 3135 pertaining to the publication of the notice of sale in a newspaper of general circulation in the city where the property is situated. Hence, even if the Affidavit of Publication was admitted as part of petitioner's evidence, it would not support petitioner's case as it does not clearly prove petitioner's compliance with the publication requirement.

Petitioner's invocation of the presumption of regularity in the performance of official duty on the part of Sheriff Castillo is misplaced. While posting the notice of sale is part of a sheriff's official functions,^[23] the actual publication of the notice of sale cannot be considered as such, since this concerns the publisher's business. Simply put, the sheriff is incompetent to prove that the notice of sale was actually published in a newspaper of general circulation.

The Court further notes that the Notice of Extra-Judicial Sale,^[24] prepared and posted by Sheriff Castillo, does not indicate the newspaper where such notice would be published. The space provided where the name of the newspaper should be was left blank, with only the dates of publication clearly written. This omission raises serious doubts as to whether there was indeed publication of the notice of sale.

Once again, the Court stresses the importance of the notice requirement, as enunciated in *Metropolitan Bank and Trust Company, Inc. v. Peñafiel*,^[25] thus:

The object of a notice of sale is to inform the public of the nature and condition of the property to be sold, and of the time, place and terms of the sale. Notices are given for the purpose of securing bidders and to prevent a sacrifice [sale] of the property. The goal of the notice requirement is to achieve a "reasonably wide publicity" of the auction sale. This is why publication in a newspaper of general circulation is required. The Court has previously taken judicial notice of the "far-reaching effects" of publishing the notice of sale in a newspaper of general circulation.

In addition, the Court reminds mortgagees of their duty to comply faithfully with the statutory requirements of foreclosure. In *Metropolitan Bank v. Wong*,^[26] the Court declared:

While the law recognizes the right of a bank to foreclose a mortgage upon the mortgagor's failure to pay his obligation, it is imperative that such right be exercised according to its clear mandate. Each and every requirement of the law must be complied with, lest, the valid exercise of the right would end. It must be remembered that the exercise of a right ends when the right disappears, and it disappears when it is abused especially to the prejudice of others.

In sum, petitioner failed to establish its compliance with the publication requirement under Section 3 of Act No. 3135. Consequently, the questioned extrajudicial foreclosure of real estate mortgage and sale are void.^[27]

WHEREFORE, we DENY the petition. We AFFIRM the 30 August 2005 Decision and 3 November 2005 Resolution of the Court of Appeals in CA-G.R. CV No. 66672.

SO ORDERED.

Brion, Del Castillo, Abad, and Perez, JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 7-16. Penned by Associate Justice Vicente S.E. Veloso with Associate Justices Roberto A. Barrios and Amelita G. Tolentino, concurring.

[3] *Id.* at 18.

[4] *Records*, pp. 200-201.

[5] *Id.* at 201.

[6] *Id.*

[7] Docketed as Civil Case No. C-18014.

[8] *Records*, p. 348. Penned by Judge Adoracion G. Angeles.

[9] *Rollo*, p. 15.

[10] *CA rollo*, p. 86.

[11] *Id.* at 102.

[12] ACT NO. 3135 - AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES.

[13] *TSN*, 3 June 1999, pp. 3-5.

[14] *China Banking Corporation v. Martir*, G.R. No. 184252, 11 September 2009, 599 SCRA 672, 682.

[15] Metropolitan Bank and Trust Company, Inc. v. Peñafiel, G.R. No. 173976, 27 February 2009, 580 SCRA 352, 357.

[16] Id.

[17] TSN, 4 November 1998, pp. 5-6, 9-10.

[18] 321 Phil. 1064, 1069 (1995).

[19] Supra note 12 at 683.

[20] See also Spouses Marcelo v. Philippine Commercial International Bank (PCIB), G.R. No. 182735, 4 December 2009; Baluyut v. Poblete, G.R. No. 144435, 6 February 2007, 514 SCRA 370, 382- 383; Fortune Motors (Phils.), Inc. v. Metropolitan Bank and Trust Company, 332 Phil. 844, 849 (1996), citing Bonnevie v. Court of Appeals, 210 Phil 100, 111 (1983).

[21] Records, pp. 275 and 303. In its 5 October 1999 Order, the trial court ruled that:

Anent the Affidavit of Publication conditionally marked as Exhibit "8," the Court sees no reason to reconsider the exclusion of the document as exhibit on the ground that the affiant was not presented to affirm the contents of her affidavit, hence, the document remains to be plain hearsay.

[22] TSN, 3 June 1999, p. 5.

[23] Bohanan v. Court of Appeals, 326 Phil. 375, 381 (1996), where the Court ruled that the testimony of the sheriff suffices in lieu of the customary certificate of posting and can properly be accorded the presumption of regularity of performance.

[24] Exhibits "6" and "6-A."

[25] Supra note 15.

[26] 412 Phil. 207, 220 (2001).

[27] Philippine National Bank v. Maraya, G.R. No. 164104, 11 September 2009, 599 SCRA 394, 400; Development Bank of the Philippines v. Court of Appeals, 451 Phil. 563, 579; Metropolitan Bank and Trust Company, Inc. v. Penafiel, supra note 15.

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