CENTURY SAVINGS BANK, PETITIONER, VS. SPOUSES DANILO T. SAMONTE AND ROSALINDA M. SAMONTE, RESPONDENTS.

G.R. No. 176212. October 20, 2010

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

This is a Petition for Review on Certiorari of the Decision[1] dated July 7, 2006 and the Resolution[2] dated January 10, 2007 of the Court of Appeals in CA-G.R. CV No. 85730. The Court of Appeals reversed and set aside the Decision[3] dated May 30, 2005 of the Regional Trial Court, National Capital Judicial Region, City of Makati, Branch 58 (Makati RTC-Branch 58), in Civil Case No. 01-1564, which dismissed for lack of merit the Complaint[4] for the annulment of an extrajudicial foreclosure filed by herein respondent spouses Danilo T. Samonte and Rosalinda M. Samonte against herein petitioner Century Savings Bank.

The present controversy stemmed from the two loans, in the aggregate amount of Three Million Five Hundred Thousand Pesos (P3,500,000.00), extended by petitioner to respondents. Each loan was secured by a promissory note[5] and deed of real estate mortgage[6] executed by respondents in favor of petitioner. The real estate mortgages were constituted on parcels of land, covered by Transfer Certificate of Title (TCT) Nos. 201334 and 205596, in respondents' names. When respondents defaulted in the payment of their loans by the latter part of 1999, petitioner initiated before the notary public extrajudicial foreclosure proceedings over the mortgaged properties, pursuant to Act No. 3135, also known as "An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgages," as amended.

Section 3 of Act No. 3135 provides for the following pre-requisites for an extrajudicial sale:

> SEC. 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.

Hence, petitioner caused the publication of a Notice of Sale[7] dated November 12, 1999, prepared by Notary Public Enriqueto I. Magpantay (Magpantay), in the Challenger News - a weekly newspaper of general circulation - on November 15, 22, and 29, 1999.[8] The published Notice of Sale stated:

> NOTICE OF SALE
>
> Upon extrajudicial petition for sale under Act 3135, as amended by Act 4118, filed by CENTURY SAVINGS BANK, mortgagee, against SPOUSES DANILO T. SAMONTE AND ROSALINDA N. SAMONTE, mortgagors, with residence and postal address at No. 7142 M. Ocampo St., Pio del Pilar, Makati City, to satisfy the mortgaged indebtedness, which, as [of] October 15, 1999, amounts to FOUR MILLION FIVE HUNDRED EIGHTY THOUSAND FIVE HUNDRED NINETY FOUR PESOS AND 62/100 (P4,580,594.62) excluding penalties, interest, and charges accruing from October 15, 1999 and attorney's fees, legal fees and expenses for the foreclosure and sale, the undersigned Notary Public for Makati City will sell at PUBLIC

> AUCTION to the highest bidder FOR CASH and in Philippine Currency, on December 9, 1999 at 10:00 o'clock in the morning, or soon thereafter, at the main entrance of the City Hall of Makati, the following described real estate properties, together with all the improvement existing thereon to wit:
>
> TRANSFER CERTIFICATE OF TITLE
> NO. 201334
> REGISTRY OF DEEDS FOR
> CITY OF MAKATI
>
> x x x x
>
> TRANSFER CERTIFICATE OF TITLE
> NO. 205596
> REGISTRY OF DEEDS FOR
> CITY OF MAKATI[9]

Notary Public Magpantay also attested in a Certificate of Posting[10] dated December 9, 1999, as follows:

> CERTIFICATE OF POSTING
>
> I HEREBY CERTIFY, that on the 15[th] day of November 1999, I have caused the posting of three (3) copies of Notice of Sale over the real estate properties covered by Transfer Certificates of Title Nos. 201334 and 205596 of the Registry of Deeds for the City of Makati in three (3) conspicuous places in Makati City, as required by law.
>
> Makati City, December 9, 1999.[11]

The public auction sale took place as scheduled on December 9, 1999, with petitioner as the winning and highest bidder. Notary Public Magpantay subsequently issued on January 6, 2000 a Certificate of Sale,[12] covering the subject properties, in favor of petitioner. This Certificate of Sale mentioned, among other things, that the extrajudicial foreclosure sale of the mortgaged properties was only a partial satisfaction of respondents' total outstanding financial obligations to petitioner. Consequently, on March 15, 2000, petitioner filed a complaint against respondents for the collection of the deficiency of their loans, which was docketed as Civil Case No. 67842 before the RTC-Branch 263 of the City of Pasig.[13]

Sometime in 2001, the parties executed a Contract of Lease[14] whereby petitioner leased one of the foreclosed properties to respondents for a period of one year, from January 16, 2001 to January 16, 2002. It was acknowledged in said contract that petitioner acquired the real property subject of the lease as the highest and winning bidder in an extrajudicial foreclosure sale, conducted pursuant to Act No. 3135, as amended; that petitioner was in the process of consolidating its title over the said real property as the redemption period expired without respondents having exercised their right of redemption; and that respondents had recognized the valid and legal right of petitioner as the absolute owner of the leased real property. Petitioner eventually consolidated its titles to the foreclosed properties. As a result, new certificates of title, TCT Nos. 21780 and 21781,[15] were issued in the name of petitioner.

A few months later, respondents filed a Complaint dated October 22, 2001, seeking the annulment of the extrajudicial foreclosure sale of their real properties. The Complaint was docketed as Civil Case No. 01-1564 and raffled to the Makati RTC-Branch 58. Among respondents' contentions was that the extrajudicial foreclosure proceedings initiated by petitioner failed to comply with the posting requirements under Section 3 of Act No. 3135, as amended. On the other hand, petitioner insisted that the extrajudicial foreclosure sale was duly conducted in accordance with law.

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The Makati RTC-Branch 58, after trial, rendered a Decision on May 30, 2005 dismissing respondents' Complaint in Civil Case No. 01-1564. The trial court found that "the Notice of Sale appears to have been posted for twenty days before the scheduled public auction, as stated in the Notary Public's Certificate of Posting";[16] and that even if the posting requirement was not complied with, the publication of the Notice of Sale in a newspaper of general circulation already satisfied the notice requirement under Act No. 3135, as amended. The trial court added that under the equitable principle of estoppel, respondents were precluded from impugning the validity of the extrajudicial foreclosure proceedings as they already acknowledged the same in their 2001 Contract of Lease with petitioner. The Makati RTC-Branch 58 decreed in the end, "WHEREFORE, premises considered, judgment is hereby rendered dismissing [herein respondents'] Complaint for lack of merit."[17]

Respondents' appeal before the Court of Appeals of the aforementioned judgment of the Makati RTC-Branch 58 was docketed as CA-G.R. CV No. 85730. In its Decision dated July 7, 2006, the Court of Appeals adjudged that the extrajudicial foreclosure proceedings were fatally defective because the "Certificate of Posting failed to state that the Notice of Sale was posted for twenty (20) days before the sale in at least three (3) public places of the city where the properties sought to be foreclosed [were] situated";[18] and that petitioner failed to satisfactorily refute respondents' contention that there was no faithful compliance with the mandate of the law on the posting of the Notice of Sale. The appellate court also held that the presumption of regularity in the performance of the notary public's duties did not apply because petitioner did not present Notary Public Magpantay to testify on the circumstances involving the posting of the Notice of Sale. The appellate court lastly ruled that the principle of estoppel could not validate an act prohibited by law, and so the Contract of Lease between petitioner and respondents did not ratify a null and void extrajudicial foreclosure sale. The Court of Appeals disposed thus:

> WHEREFORE, the instant appeal is GRANTED. The assailed Decision dated May 30, 2005 is SET ASIDE and a new one is entered annulling the extra-judicial foreclosure sale of [herein respondents'] properties covered by Transfer Certificates of Title (TCT) Nos. 201334 and 205596 of the Registry of Deeds of Makati City.[19]

Petitioner comes before this Court via the present Petition for Review on Certiorari asserting that notices of the extrajudicial foreclosure sale of respondents' mortgaged properties were duly posted, in compliance with Section 3 of Act No. 3135, as amended. Although Notary Public Magpantay's Certificate of Posting did not exactly state that the notices of sale were "posted for not less than twenty days" and in "at least three public places where the properties sought to be foreclosed were situated[,]" the said certificate, nonetheless, affirmed that copies of the Notice of Sale were posted on November 15, 1999 "in three (3) conspicuous places in Makati City." Since the public auction of the mortgaged properties was held on December 9, 1999, the copies of the Notice of Sale had been posted in three public places for 24 days, even more than the 20 days required by law. The Certificate of Posting prima facie proved compliance with the required posting of the notices of sale, thus, the testimony of the notary public who issued the certificate was not necessary in the absence of proof that irregularities attended the performance of his duties.

Petitioner argues in the alternative that the publication of the notice of sale already constitutes sufficient compliance with the notice requirements of Act No. 3135, as amended. The absence of actual posting of the notice of sale, or the lack of or defect in the certificate of posting, should not invalidate a public auction when the same notice of sale had been published. In this case, it is undisputed that the Notice of Sale was duly published in the Challenger News.

Petitioner also posits that the facts of the case are undisputed. There is no question that Notary Public Magpantay conducted the foreclosure proceedings involving respondents' properties, and that the extrajudicial foreclosure sale took place. Such proceedings enjoy the presumption of regularity. The chief issue involved in the case at bar

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is a question of law arising from the foregoing undisputed facts, specifically, "[s]hould the extrajudicial foreclosure sale be declared invalid because the Certificate of Posting merely states that the Notice of Sale was posted on 15 November 1999 in three conspicuous places in Makati City." Petitioner submits that since it was respondents who instituted the action for annulment of foreclosure, the burden of proof is upon them to prove the invalidity of the foreclosure proceedings for non-compliance with the law.

Respondents conclude that the extrajudicial foreclosure proceeding was correctly nullified by the appellate court. Respondents counter that per Notary Public Magpantay's Certificate of Posting, the Notice of Sale was posted for only one day as said certificate failed to state the duration of the posting prior to the public auction. Also, the Notice of Sale referred to "conspicuous places," which are not the same as the "public places" required by law. Respondents maintain that the law requires both posting and publication of the notice of sale, and that the question of whether there had been actual compliance with the legal requirements for a valid foreclosure sale is a question of fact not proper for determination at this stage of the case.

The Court finds the instant Petition meritorious.

In Microsoft Corporation v. Maxicorp, Inc.,[20] the Court elucidated on the distinction between questions of law and fact:

> The distinction between questions of law and questions of fact is settled. A question of law exists when the doubt or difference centers on what the law is on a certain state of facts. A question of fact exists if the doubt centers on the truth or falsity of the alleged facts. Though this delineation seems simple, determining the true nature and extent of the distinction is sometimes problematic. For example, it is incorrect to presume that all cases where the facts are not in dispute automatically involve purely questions of law.
>
> There is a question of law if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. If the query requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relation to each other, the issue in that query is factual. Our ruling in Paterno v. Paterno [G.R. No. 63680, 23 March 1990, 183 SCRA 630] is illustrative on this point:
>
> Such questions as whether certain items of evidence should be accorded probative value or weight, or rejected as feeble or spurious, or whether or not the proofs on one side or the other are clear and convincing and adequate to establish a proposition in issue, are without doubt questions of fact. Whether or not the body of proofs presented by a party, weighed and analyzed in relation to contrary evidence submitted by adverse party, may be said to be strong, clear and convincing; whether or not certain documents presented by one side should be accorded full faith and credit in the face of protests as to their spurious character by the other side; whether or not inconsistencies in the body of proofs of a party are of such gravity as to justify refusing to give said proofs weight - all these are issues of fact.

It is true that Maxicorp did not contest the facts alleged by petitioners. But this situation does not automatically transform all issues raised in the petition into questions of law. The issues must meet the tests outlined in Paterno.[21]

The main issue in the case at bar is whether the extrajudicial foreclosure sale of respondents' mortgaged properties was valid. The resolution of said issue, however, is dependent on the answer to the question of whether the legal requirements on the notice of sale were complied with. Necessarily, the Court must review the evidence on record, most especially, Notary Public Magpantay's Certificate of Posting, to determine the weight and probative value to accord the same. Non-compliance with the requirements of notice and publication in an extrajudicial

foreclosure sale is a factual issue. The resolution thereof by the lower courts is binding and conclusive upon this Court. However, this rule is subject to exceptions, as when the findings of the trial court and the Court of Appeals are in conflict. Also, it must be noted that non-compliance with the statutory requisites could constitute a jurisdictional defect that would invalidate the sale.[22]

After a review of the evidence on record, the Court declares that the extrajudicial foreclosure sale of respondents' properties is valid, having complied with the legal requirements for the same.

It is an elementary rule that the "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."[23] In Cristobal v. Court of Appeals,[24] the Court explicitly ruled that foreclosure proceedings enjoy the presumption of regularity and that the mortgagor who alleges absence of a requisite has the burden of proving such fact, to wit:

> Further, as respondent bank asserts, a mortgagor who alleges absence of a requisite has the burden of establishing that fact. Petitioners failed in this regard. Foreclosure proceedings have in their favor the presumption of regularity and the burden of evidence to rebut the same is on the petitioners. As well said by the respondent appellate court:
>
> ". . . Under the circumstances, there is a basis for presuming that official duty has been regularly performed by the sheriff. Being a disputable presumption, the same is valid unless controverted by evidence. The presumption has not been rebutted by any convincing and substantial evidence by the appellee who has the onus to present evidence that appellant has not complied with the posting requirement of the law. In the absence therefore of any proof to the contrary, the presumption that official duty has been regularly performed stays."[25] (Emphases supplied.)

In this case, it was respondents who instituted Civil Case No. 01-1564 seeking the annulment of the extrajudicial foreclosure of their mortgaged properties on the ground of non-compliance with the requirements of the law on the posting of the notices of sale. Thus, the burden falls upon respondents to prove the fact of non-compliance; but respondents miserably failed in this regard. Respondents did not present any evidence at all to establish that the notices of sale were not posted as required under Section 3 of Act No. 3135, as amended. Instead, respondents merely focused on how Notary Public Magpantay's Certificate of Posting was worded, and emphasized on technicalities and semantics.

Respondents insist that the phrase "on the 15[th] day of November 1999, I have caused the posting of three (3) copies of Notice of Sale" in the Certificate of Posting meant that Notary Public Magpantay posted the notices for only one day, i.e., on November 15, 1999. This is a rather specious interpretation of the aforequoted phrase. It is more logical and reasonable to understand the same phrase as to mean that the notices were posted beginning November 15, 1999 until the issuance of the certificate on December 9, 1999. There is also no basis to require the notary public's certificate to exactly state that the notices of sale were posted at "public places." Notary Public Magpantay's use of the words "conspicuous places" in his certificate already satisfactorily complies with the legal requirement for posting. The adjective "public" may refer to that which is "exposed to general view," and "conspicuous" is a synonym thereof.[26]

Moreover, it bears to stress that the Certificate of Posting is actually evidence presented by the petitioner to establish that copies of the Notice of Sale were indeed posted as required by Act No. 3135, as amended. Without presenting their own evidence of the alleged lack of posting, respondents contented themselves with challenging the contents of said certificate. As plaintiffs in Civil Case No. 01-1564, respondents must rely on the strength of their own evidence and not upon the weakness of the petitioner's.[27]

In addition, despite any defect in the posting of the Notice of Sale, the Court reiterates its ruling in previous

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jurisprudence that the publication of the same notice in a newspaper of general circulation is already sufficient compliance with the requirement of the law.

In Olizon v. Court of Appeals,[28] the Court expounded on the purpose for giving notice of the foreclosure sale; and if such purpose could be attained by publication alone, then the absence of actual posting should not nullify the sale. Thus:

> We take judicial notice of the fact that newspaper publications have more far-reaching effects than posting on bulletin boards in public places. There is a greater probability that an announcement or notice published in a newspaper of general circulation, which is distributed nationwide, shall have a readership of more people than that posted in a public bulletin board, no matter how strategic its location may be, which caters only to a limited few. Hence, the publication of the notice of sale in the newspaper of general circulation alone is more than sufficient compliance with the notice-posting requirement of the law. By such publication, a reasonably wide publicity had been effected such that those interested might attend the public sale, and the purpose of the law had been thereby subserved.
>
> 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 of the property. If these objects are attained, immaterial errors and mistakes will not affect the sufficiency of the notice; but if mistakes or omissions occur in the notices of sale, which are calculated to deter or mislead bidders, to depreciate the value of the property, or to prevent it from bringing a fair price, such mistakes or omissions will be fatal to the validity of the notice, and also to the sale made pursuant thereto.
>
> In the instant case, the aforesaid objective was attained since there was sufficient publicity of the sale through the newspaper publication. There is completely no showing that the property was sold for a price far below its value as to insinuate any bad faith, nor was there any showing or even an intimation of collusion between the sheriff who conducted the sale and respondent bank. This being so, the alleged non-compliance with the posting requirement, even if true, will not justify the setting aside of the sale.[29] (Emphases supplied.)

Olizon squarely applies in this case. It is not disputed that the Notice of Sale was duly published in a newspaper of general circulation once a week for three consecutive weeks. Respondents did not allege, much less prove, any mistake or omission in the published Notice of Sale calculated to deter or mislead bidders, depreciate the value of the property, or to prevent it from bringing a fair price; or sale of the mortgaged properties for a price far below their value as to insinuate bad faith; or collusion between Notary Public Magpantay, who conducted the sale, and petitioner. Hence, the alleged non-compliance with the posting requirement, even if true, shall not justify the setting aside of the foreclosure sale.

Finally, the Court agrees with the RTC that respondents are already estopped from challenging the validity of the foreclosure sale, after entering into a Contract of Lease with petitioner over one of the foreclosed properties. The title of the landlord is a conclusive presumption as against the tenant or lessee. According to Section 2(b), Rule 131 of the Rules of Court, "[t]he tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation of landlord and tenant between them." The juridical relationship between petitioner as lessor and respondents as lessees carries with it a recognition of the lessor's title. As lessees, then respondents are estopped to deny their landlord's title, or to assert a better title not only in themselves, but also in some third person while they remain in possession of the leased premises and until they surrender possession to the landlord. This estoppel applies even though the lessor had no title at the time the relation of lessor and lessee was created, and may be asserted not only by the original lessor, but also by those who succeed to his title.[30]

The Court quotes with approval the following findings of the RTC:

> Further, this Court upholds the validity of the extrajudicial foreclosure proceeding under the equitable principle

> of estoppel. [Herein respondents'] admitted execution of the Contract of Lease alone establishes that they do not have any cause of action or are estopped from impugning the validity of the subject extrajudicial foreclosure proceedings. In the Contract of Lease, [respondents'] clearly acknowledge that the subject extrajudicial foreclosure sale was conducted in accordance with Act No. 3135, as amended; that they failed to redeem the foreclosed properties within the redemption period; and that [petitioner] has valid and legal right and title as absolute owner of the foreclosed properties. [Respondents] failed to mention or question the validity of the Contract of Lease in their Complaint. There being no evidence presented that [respondents] executed the Contract of Lease by mistake or through violence, intimidation, undue influence, or fraud, [respondents] are bound by the stipulations therein and to the consequences thereof.[31]

WHEREFORE, in view of the foregoing, the instant petition is hereby GRANTED. The Decision dated July 7, 2006 and the Resolution dated January 10, 2007 of the Court of Appeals in CA-G.R. CV No. 85730 are SET ASIDE and the Decision dated May 30, 2005 of the Regional Trial Court, National Capital Judicial Region, City of Makati, Branch 58, in Civil Case No. 01-1564, is REINSTATED. No costs.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Perez, and Mendoza,[*]JJ., concur.

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[*] Per Raffle dated October 20, 2010.

[1] Rollo, pp. 40-50; penned by Associate Justice Vicente S.E. Veloso with Associate Justices Conrado M. Vasquez, Jr. and Mariano C. del Castillo (now a member of this Court), concurring.

[2] Id. at 52.

[3] Id. at 166-176.

[4] Id. at 76-91.

[5] Id. at 126-127.

[6] Id. at 128-132.

[7] Id. at 153-154.

[8] Id. at 155-162.

[9] Id. at 162.

[10] Id. at 74.

[11] Id.

[12] Id. at 150-151.

[13] Id. at 123-125.

[14] Id. at 99-102.

[15] Id. at 104-105.

[16] Id. at 175.

[17] Id. at 176-A.

[18] Id. at 47.

[19] Id. at 49-50.

[20] G.R. No. 140946, September 13, 2004, 438 SCRA 224.

[21] Id. at 230-232.

[22] Cristobal v. Court of Appeals, 384 Phil. 807, 814 (2000).

[23] Section 1, Rule 131, Rules of Court.

[24] Supra note 22.

[25] Id. at 815.

[26] Webster's Third New International Dictionary.

[27] Ong v. Yap, 492 Phil. 188, 197 (2005).

[28] G.R. No. 107075, September 1, 1994, 236 SCRA 148.

[29] Id. at 155-156.

[30] Geminiano v. Court of Appeals, 328 Phil. 682, 688-689 (1996).

[31] Rollo, p. 175.

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