

**RESORT HOTELS CORPORATION, RODOLFO M. CUENCA AND
CUENCA INVESTMENT CORPORATION, PETITIONERS, VS.
DEVELOPMENT BANK OF THE PHILIPPINES AND SM INVESTMENT
CORPORATION, RESPONDENTS.**

G.R. No. 180439. December 23, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

Before us is a petition for review on certiorari under Rule 45 of the Rules of Court, assailing the Court of Appeals (CA) Decision[1] in CA-G.R. CV No. 81363, which reversed and set aside the Decision of the Regional Trial Court (RTC), Branch 134, Makati City, in Civil Case Nos. 6342, 269-R, TG-799 and 9497.[2]

The long and arduous facts, as found by the CA, follow:

[Petitioner] Resort Hotel[s] Corporation (RHC for brevity), a corporation duly organized and existing in accordance with Philippine laws, was the previous owner and operator of several hotels located outside Metro Manila; namely Baguio Pines Hotel in Baguio City, Taal Vista Lodge Hotel in Tagaytay City, and Hotel Mindanao in Cagayan de Oro City. Among RHC's stockholders were [petitioners] Cuenca Investment Corporation and Rodolfo Cuenca, who was the erstwhile President and Chairman of the Board of Directors of the said Corporation. On the other hand, [respondent] Development Bank of the Philippines (DBP), a government financial institution, was RHC's major creditor that eventually foreclosed the disputed hotels upon the latter's default. [Respondent] SM Investment Corporation (SMIC) was the subsequent owner of Taal Vista Lodge Hotel and Baguio Pines Hotel.

It appears that from 1969 up to 1981, RHC obtained from DBP several loans, aggregating approximately P157 million, for the purpose of expanding hotel capacities, operations and services nationwide. To secure the payment of these loans, RHC executed real estate mortgages in favor of DBP covering the following properties of RHC: a) two (2) parcels of land situated in Baguio City, covered by Transfer Certificate of Title (TCT) No. T-15880 and Original Certificate of Title No. P-1316, which included Baguio Pines Hotel x x x; b) six (6) parcels of land located in Tagaytay City, covered by TCT Nos. T-8085, T-10801, T-10802, T-10803, T-10804 and T-10805, which included Taal Vista Lodge Hotel x x x; and c) two (2) parcels of land situated in Cagayan de Oro, covered by TCT Nos. T-34777 and T-34778, which included Hotel Mindanao x x x. Likewise, RHC executed chattel mortgages additionally securing the loans with all the personal properties located inside its head office in Makati.

When the loans became due and demandable, RHC failed to pay. Sometime in the early '80s, RHC proposed to DBP that part of its obligations be converted into equity inasmuch as it was experiencing financial difficulties. DBP subsequently acceded. With the approval of the Board of Directors of RHC, which was then headed by its Chairman, Rodolfo Cuenca, DBP obtained shareholdings, equivalent to 55% of RHC's total stockholders' equity, in exchange for the reduction of RHC's obligation to DBP by [as] much as P47 million. As a result of the debt-to-equity conversion, DBP acquired two (2) board seats in the eleven-member Board of Directors of RHC.

As of January 10, 1984, RHC's outstanding obligation was pegged at P114,005,404.02 while its total arrearages was P56,134,819.52 which was about 49% of its total outstanding obligation. Consequently, DBP applied for the extrajudicial foreclosure of the real estate and chattel mortgages pursuant to Presidential Decree No. 385, also known as "The Law on Mandatory Foreclosure," mandating government financial institutions to foreclose mandatorily loans with arrearages amounting to at least 20% of the total outstanding obligation.

Intending to block the impending foreclosure of the mortgaged personal properties, RHC filed on February 6, 1984 a Complaint x x x against DBP and the Sheriff of Rizal or Makati before Branch 148 of Regional Trial Court (RTC) of Makati, docketed therein as Civil Case No. 6342. With respect to the mortgaged real properties, RHC filed similar Complaints before Branch 7 of RTC of Baguio City x x x, Branch 18 of RTC of Tagaytay City x x x, and Branch 18 of RTC of Misamis Oriental

x x x, docketed as therein Civil Case Nos. 269-R, TG-799 and 9497, respectively. In Civil Case Nos. 6342 and 269-R, RHC specifically prayed for the issuance of restraining orders or preliminary injunctive writs to stop or enjoin the Sheriffs from conducting foreclosure proceedings.

By the Orders dated March 6, 1984 and March 21, 1984, the applications for restraining orders or preliminary injunctive writ were denied by the RTC of Makati x x x and Baguio City, respectively. Unsatisfied therewith, RHC filed separate petitions for certiorari, docketed as AC-G.R. Nos. SP-02939 and SP-03103 assailing the Orders of the lower courts with the then Intermediate Appellate Court. On both occasions, the then Intermediate Appellate Court sustained the Orders of denial of the two (2) lower court x x x.

As there were no restraining orders or injunctive writs whatsoever issued by the lower courts, the foreclosure sale of the mortgaged properties went through as scheduled. The auction sale of the mortgaged chattels was conducted on May 28, 1984 by the Sheriff of Makati. As regards the mortgaged real properties, the auction sale of those located in Cagayan de Oro was conducted on February 27, 1984 by the Office of the Provincial Sheriff of Misamis Oriental, while the auction sale of those located in Baguio City was held on March 22, 1984 by the Office of the City and Provincial Sheriff of Baguio City. With respect to those located in Tagaytay City, the auction sale was conducted on June 11, 1984 by the Office of the Provincial Sheriff.

In all the foreclosure sales, DBP emerged and was declared the highest and winning bidder. With regard to the foreclosed chattels, DBP posted a bid price of P117,500.00 x x x. With regard to the foreclosed real properties, DBP bought the Cagayan de Oro properties for P7,440,565.00, the Baguio City properties for P32,158,515.00, and the Tagaytay City properties for P26,450,560.00. Subsequently, three (3) Certificates of Sale were issued to evidence sale of the mortgaged real properties to DBP x x x.

Meanwhile, on October 23, 1984, Baguio Pines Hotel was gutted by fire. A total sum of about P64,566,000.00 representing fire insurance proceeds was collected by DBP and applied to the obligation of RHC x x x. Thereafter, the one-year statutory period of redemption expired without RHC exercising the right of redemption. Consequently, title[s] to the foreclosed properties were consolidated in the name of DBP.

By Resolution dated April 16, 1985 issued by the Supreme Court en banc, Civil Case Nos. 269-R, 9497 and TG-799 were consolidated with Civil Case No. 6342 which was then pending before Branch 148 of the RTC of Makati. Later on, the four (4) consolidated cases were transferred to Branch 134 of the same court.

On April 23, 1985, RHC filed the first Amended and Supplemental Complaint x x x pleading new and additional causes of action and enabling Rodolfo Cuenca to join the suit as co-plaintiff.

On May 26, 1988, DBP sold the Baguio City properties to SMIC x x x. Likewise on July 11, 1988, DBP sold the Tagaytay City properties, which included the Taal Vista Lodge Hotel, to Tagaytay and Taal Management Corporation (TTMC) x x x, which in turn sold the same to SMIC for P38,000,000.00 x x x.

On June 23, 1992, RHC and Rodolfo Cuenca filed their Second Amended and Supplemental Complaint x x x enabling Rodolfo Cuenca and CIC to prosecute the action as a derivative stockholder's suit in behalf of RHC.

On April 7, 1995, RHC, Rodolfo Cuenca and CIC x x x filed their Third Amended and Supplemental Complaint x x x impleading additional defendants; namely, SMIC in Civil Case No. 269-R, TTMC in Civil Case No. TG-799.

On February 5, 1996, [petitioners] filed their Fourth Amended Complaint x x x asserting nine (9) causes of action against DBP, SMIC and the Sheriffs responsible for the foreclosure proceedings, with TTMC being dropped as defendant. In their first cause of action, which was to declare the obligation extinguished, they alleged, inter alia, that DBP had no right to foreclose the mortgages since RHC's obligation to DBP had been extinguished by confusion or merger which occurred when shareholdings in RHC were acquired by DBP in accordance with debt-to-equity conversion agreement. In their second cause of action, which was to restructure the obligation, they asserted, inter alia, that assuming RHC's obligation to DBP had not been extinguished, RHC was entitled to loan restructuring at the very least. In their third cause of action, which was to ascertain and fix the amount of obligation, they insisted that DBP had no right to foreclose the mortgages as the amount of the outstanding obligation had not yet been liquidated or ascertained. In their fourth cause of action, which was to annul the mortgages, the plaintiffs-appellees claimed that DBP had no right to foreclose the mortgages considering that DBP was in fact and in effect lending to itself to accompany and carry into effect the Government's purpose and policy, and that some of the mortgages sought to be foreclosed` were not registered. In their fifth cause of action, which was to annul the foreclosure sales, they insisted, inter alia, that the required posting and publication of notices of extrajudicial foreclosures had not been complied with, and there was gross inadequacy in the purchase prices of the foreclosed properties. In their sixth cause of action, which was to declare the Baguio Pines Hotel effectively redeemed and the amount of refund due, they alleged that DBP acquired Baguio Pines Hotel at the foreclosure sale for P32,158,515.00. While Baguio Pines Hotel was in the possession of DBP, it was destroyed by fire. However, DBP collected the insurance proceeds despite the fact that they were more than the amount of the purchase price. In their seventh cause of action, they alleged that in the event that judgment was not rendered declaring the Baguio Pines Hotel redeemed, RHC's total obligation to DBP should be declared to be fully satisfied and DBP should be ordered to refund the difference between the insurance proceeds and the correct outstanding obligation of RHC to DBP. In their eighth cause of action, which was to declare Rodolfo Cuenca released or discharged from his joint and several undertaking, they asseverated, inter alia, that any joint and several undertaking of Rodolfo Cuenca to answer for the obligation of RHC to DBP should be reformed on the ground of mistake, fraud, inequitable conduct or accident since it was merely a formality to ensure the payment of RHC's obligations. Finally, in their ninth cause of action, the plaintiffs-appellees alleged that they were entitled to exemplary damages and attorney's fees.

In its Answer thereto, DBP maintained that the [petitioners] had no cause of action considering that: a) there was no confusion or merger because the equity of the original stockholders was unimpaired, and control of the said corporation remained with the original stockholders; b) restructuring was not a matter of right for one party, but could arise only from the mutual agreement of the parties, restructuring in effect a novation of the loan contract; c) the obligations of RHC had been properly computed, and the computation already took into account the debt-to-equity conversion; d) DBP was an entity distinct and separate from RHC, and therefore, could not have possibly lent to itself; e) non-registration of mortgages did not render them invalid as between the parties; f) all requirements of the law regarding foreclosure were complied with; g) the insurance proceeds collected by DBP were credited to the account of RHC, but the said proceeds were still insufficient to discharge the obligation; h) the proceeds from the foreclosure sales did not even amount to one-half of the total obligations of RHC; i) Rodolfo Cuenca's undertaking to be bound jointly and severally liable with RHC was not a mere formality but a contract defining his obligation in case RHC failed to pay; j) there was no legal ground to discharge Rodolfo Cuenca from his obligation; and k) DBP was not liable for any damages since it was RHC, Rodolfo Cuenca and CIC that had acted in bad faith x x x.

For its part, SMIC filed its Answer to Fourth Amended Complaint x x x averring that a) RHC, Rodolfo Cuenca and CIC had no cause of action against it; b) the RTC had no jurisdiction over the nature of the action or suit, it involving an intra-corporate; and c) it was a buyer in good faith in connection with its acquisition of Taal Vista

Lodge Hotel and Baguio Pines Hotel.

On March 27, 1998, RHC, [CIC and Cuenca] filed their Fifth Amended Complaint x x x deleting the ninth cause of action praying for the payment of exemplary damages and attorney's fees. On February 15, 2000, they made a Manifestation x x x that they were withdrawing their Fifth Amended Complaint. With the withdrawal of the said Complaint, the RTC conducted the pre-trial of the consolidated cases on the basis of the Fourth Amended and Supplemental Complaint x x x.

On March 13, 2000, [petitioners] filed a Motion to Drop as Defendants x x x on the ground that the Sheriffs of Rizal or Makati, Baguio City, Cavite and Misamis Oriental were not indispensable to resolution of the consolidated cases. There being no objection interposed by DBP and SMIC, the RTC, in its Order dated May 17, 2000 x x x dropped the said Sheriffs as defendants in the consolidated cases.

Thereafter, trial of the consolidated cases ensued.

During the hearing, [petitioners] presented as witnesses Bayani Santos, the Senior Manager of DBP, Roberto Cuenca and his father, Rodolfo Cuenca. Their testimonies were aptly summarized by the RTC, thus:

Bayani Santos, senior manager of defendant DBP testified that he has been employed therein since November 14, 1974. His functions include the handling of special accounts or non-performing accounts of the bank. He said that he brought with him notices of foreclosure for the Hotel Mindanao on February 27, 1984[,] for the Pines Hotel on March 22, 1984 and for Taal Vista Lodge on June 11, 1984. When asked about proofs of posting and publication, witness Santos showed a Xerox copy of affidavit of publication for the extrajudicial sale of Tagaytay property. Witness Santos likewise presented letters dated March 2 and May 23, 1984 addressed to plaintiff RHC about the auction sale of the Tagaytay and Baguio properties on March 22, 27 and June 11, 1984. He explained that there were two (2) dates set for auction of the Baguio properties because the first date was postponed. About the total loan obligation of plaintiff RHC, witness Santos merely pointed to the application for foreclosure of the real estate and chattel mortgages dated January 11, 1984. He concluded that there was no document pertaining to any restructuring agreement.

Witness Roberto Cuenca, son of Rodolfo Cuenca, the President and Chairman of plaintiff RHC, testified that he served the company as Vice President for operations and then Executive Vice President. He declared that his functions included the management of operations of the three (3) hotels of plaintiff RHC. He revealed that their business started sometime in 1960 and Cuenca Investment Corporation is a family corporation which owned shares in plaintiff RHC. He admitted that defendant DBP was their principal creditor particularly in the capital improvement of Pines Hotel, that their loans with defendant DBP were secured by real estate and chattel mortgages including the three (3) hotels and the personal properties found in the Makati Head office, that in 1984 defendant DBP foreclosed all the mortgaged properties for a claim of Php114,005,404.02 and that thereafter, assumed control of the management of the hotels. He likewise intimated that contrary to the claim of defendant DBP, plaintiff RHC's books of account indicated merely a loan balance of Php84,000,000.00 with accounts receivables from their clients of about Php20-23 million. Hence, plaintiff RHC filed the cases before the court having jurisdiction over the mortgaged properties, for (sic) injunction and declaratory judgment that defendant DBP was without right to foreclose the mortgages. He disclosed that despite of the applications for injunction pending before the trial courts, defendant DBP proceeded with the foreclosure of the mortgages without complying with the legal requirements of notice, posting and publication. He likewise disclosed that in October 1984, Pines Hotel was gutted by fire while in the hands of defendant DBP. Resultantly, defendant DBP collected the insurance proceeds of the hotel amount to Php50 million. When asked about the condition of the hotels, witness stated that in 1988, Pines Hotel and Vista Lodge were sold to defendant SMIC.

On cross-examination, witness Roberto Cuenca recounted that sometime in 1980 and 1982, there were conversion of the loans to equity of defendant DBP considering the default in the payment of the loan obligations.

On redirect-examination, witness Cuenca admitted that since plaintiff RHC was in default in paying its obligations, he negotiated for three (3) options with defendant DBP which are the conversion of equity, loan restructuring and loan with dacion en pago

x x x x

Witness Rodolfo Cuenca's testimonies merely corroborated the testimonies of witness Roberto Cuenca. x x x

Upon the other hand, [respondents] proffered in evidence the testimonies of Lourdes Frangue, the Administrative Officer of DBP, Dolores Santos, the Chief of the Transaction Processing and Retail Division, and Atty. Eпитacio Borcelis, the corporate secretary of SMIC, which were narrated by the RTC in this wise:

Witness Lourdes Frangue, Administrative Officer of DBP testified that she was employed by DBP on May 4, 1982 and was assigned to the Litigation and Foreclosure Group in 1984. She recounted that her duties include attending to foreclosure records and documents and that she encountered the records of RHC when she undertook the foreclosure proceedings in 1984. She presented the certificates of sales of the foreclosed properties particularly the Cagayan de Oro properties dated February 27, 1984, the Baguio properties dated March 22, 1984 and the Tagaytay properties dated June 11, 1984. Witness Frangue revealed that [in] the foreclosure of the mortgaged properties of RHC, DBP acquired the same being the highest bidder in the auction sales and then titles were subsequently consolidated in the name [of] DBP.

On cross-examination, Witness Frangue denied any personal knowledge about the loan obligations of RHC stating that a different department handled the document of the subject loans.

Witness Dolores Santos, Chief of the Transaction Processing and Retail Division of DBP testified that she was with the bank since 1982 as a Senior Clerk of the Security and Transport Department. She revealed that she was promoted as a supervisor, she recounted that she handled the past due accounts and acquired assets of the bank and its records, as a custodian. She declared that she only knew about the accounts of RHC on August 8, 1992 on the Statement of Accounts.

On cross-examination, witness Santos likewise denied any personal knowledge of the loans of RHC.

x x x x

Atty. Eпитacio Borcelis, corporate secretary of SMIC and lawyer-in-charge of the acquisition of real estate properties of SMIC testified that his duties include the keeping of all the corporate records, representing the company in the acquisition of properties like the Pines Hotel and the Taal Vista Lodge. When asked about notice of lis pendens, witness admitted having knowledge of the annotation in the title of Baguio Pines Hotel but denied as to the Taal Vista Property. Likewise, witness denied that SMIC bought RHC's properties from DBP alleging that it bought the properties from Tagaytay Taal Management Corporation (TTMC for short). Witness brought up the court case between Robinsons and DBP. However, when the witness was confronted about the deeds of sale between DBP and TTMC and TTMC and SMIC, with the material dates stated therein where the supposed first sale that took place between DBP and TTMC was dated June 11, 1988, witness Borcelis explained that it was because there was [an] agreement between SMIC and TTMC that the full payment by TTMC of the purchase price of the properties will be taken from SMIC. When asked about the stated agreement, witness presented no document pertaining to it. x x x

In the Decision dated February 13, 2004, the RTC nullified the foreclosure sale of the disputed real and personal properties, and at the same time, discharged Rodolfo Cuenca from personal liability for lack of evidence. The RTC also found that SMIC acted in bad faith when it purchased the Taal Vista Lodge Hotel from TTMC, and Baguio Pines Hotel from DBP.[3]

The RTC disposed of the case, to wit:

WHEREFORE, premises considered, judgment is hereby rendered in favor of [petitioners] and against [respondents] DBP and SMIC as follows[:]

- (1) The loan obligations of [petitioner] RHC to [respondent] DBP is hereby fixed at Php 114,005,404.02 from the date of this judgment with 12% interest per annum until fully paid;
- (2) The foreclosure of the real estate and chattel mortgages executed by [petitioner] RHC in favor of [respondent] DBP are declared void and without effect;
- (3) The auction sales of the subject mortgaged properties of [petitioner] RHC are likewise declared void;
- (4) The fire insurance proceeds of the Pines Hotel which was collected by [respondent] DBP shall be deducted from the total loan obligations of [petitioner] RHC with the corresponding 12% interest per annum from the time it was received until this judgment;
- (5) Respondent] SMIC is declared buyer in bad faith and bound by this judgment; and
- (6) [Petitioner] Cuenca is discharged from the obligations of [petitioner] RHC with [respondent] DBP.

The counterclaims of [respondents] DBP and SMIC are denied for lack of merit.[4]

Aggrieved, respondents questioned the RTC decision before the CA. As previously adverted to, the CA reversed and set aside the RTC decision, thus:

WHEREFORE, the Decision dated February 13, 2004 of Branch 134 of the Regional Trial Court of Makati City is hereby REVERSED and SET ASIDE. A new one is hereby entered DISMISSING Civil Case Nos. 6342, 269-R, TG-799 and 9497 and ORDERING RHC and Rodolfo Cuenca to pay, jointly and severally, DBP the amount of P612,476,182.08, inclusive of interest, representing deficiency balance as of August 31, 2002.[5]

Hence, the instant appeal taking exception to the appellate court's disposition and positing the following issues:

- [WHETHER] THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN HOLDING THAT THE TESTIMONIES OF RODOLFO CUENCA AND ROBERTO CUENCA WERE NOT SUFFICIENT TO SUCCESSFULLY CHALLENGE THE VALIDITY OF THE FORECLOSURE PROCEEDINGS.
- [WHETHER] THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN HOLDING THAT THE FORECLOSURE PROCEEDINGS ARE VALID BASED ON THE CERTIFICATE OF SALE PREPARED BY THE SHERIFFS WHO CONDUCTED THE FORECLOSURE SALES.
- [WHETHER] THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN HOLDING THAT PETITIONERS COULD NOT USE THE FIRE INSURANCE PROCEEDS TO REDEEM THE BAGUIO PINES HOTEL PROPERTY.
- [WHETHER] THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN FIXING PETITIONERS' OBLIGATION TO RESPONDENT DBP AT P612,476,182.08 INSTEAD OF P114,005,404.02.
- [WHETHER] THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN HOLDING PETITIONER RODOLFO CUENCA SOLIDARILY LIABLE WITH PETITIONER RHC.[6]

In all, petitioners persist in the correctness of the RTC's disposition that: (1) the extrajudicial foreclosure and the subsequent sale of the mortgaged properties are null and void for non-compliance with the notice, posting and publication requirements provided in Act No. 3135;[7] (2) the loan obligation of petitioners to DBP is fixed at P114,005,404.02; and (3) petitioner Cuenca is discharged from the obligations of petitioner RHC to respondent DBP for lack of evidence pointing to his personal liability therefor.

The petition is partly meritorious.

We are in complete accord with the appellate court's ruling that the dearth of evidence presented by petitioners inevitably failed to establish their claim that DBP did not comply with the statutory requirements on the extrajudicial foreclosure of mortgages. As plaintiffs before the trial court, petitioners rested the burden to prove by a preponderance of evidence the numerous causes of action they brought against herein respondents.

Section 1 of Rule 131 of the Rules of Court, in relation to Section 1 of Rule 133, unequivocally provides:

SECTION 1. Burden of proof. - 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.

SECTION 1. Preponderance of evidence, how determined. - In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

Petitioners are adamant, however, that it was incumbent upon respondents to prove their denial of petitioners' claims; i.e., foreclosure proceedings were validly conducted consistent with Act No. 3135.

We disagree. *Ei incumbit probatio qui dicit, non qui negat* (he who asserts, not he who denies, must prove).[8] The burden of proof that foreclosure proceedings on the subject properties were not validly conducted lies with mortgagor-party litigant claiming such. We have consistently applied the ancient rule that if a plaintiff, upon whom rests the burden of proving his cause of action, fails to show in a satisfactory manner facts on which he bases his claim, the defendant is under no obligation to prove his exception or defense.[9]

On this score, we find no error in the disquisition of the CA, to wit:

We rule that the testimonies of Rodolfo and Roberto Cuenca were not sufficient to successfully challenge the validity of the foreclosure proceedings. We agree with the [respondents] that the testimonies of Rodolfo and Roberto Cuenca with respect to the absence of posting and publication of notices of foreclosure sale, consisting in the words "I don't believe," "I don't remember," "I don't think" and "if I recall," without being supported by any convincing and substantial evidence, were not sufficient to prove lack of compliance on the part of DBP with the requirements of notice, posting and publication prescribed in Act No. 3135. It must be emphasized that the allegation of Rodolfo and Roberto Cuenca that they, as officers of RHC, failed to receive notices of the foreclosure sale could not successfully defeat the validity of the foreclosure proceedings. As held by the Supreme Court in *Philippine National Bank v. Nepomuceno Productions, Inc.*, x x x personal notice to the mortgagor is not necessary for the validity of the foreclosure proceedings, thus:

"The principal object of a notice of sale in a foreclosure of mortgage is not so much to notify the mortgagor as to inform the public generally of the nature and condition of the property to be sold, and of the time, place, and terms of the sale. Notices are given to secure bidders and prevent a sacrifice of the property. Clearly, the statutory requirements of posting and publication are mandated, not for the mortgagor's benefit, but for the public or third persons. In fact, personal notice to the mortgagor in extrajudicial foreclosure proceedings is not even necessary, unless stipulated."

Likewise, the [petitioners] could not impugn the validity of the foreclosure proceedings by the mere fact that both Rodolfo and Roberto Cuenca could not recall whether DBP applied for writs of possession and posted bond thereto during the redemption period as mandated by Section 7 of Act No. 3135. In a civil case, the burden of

proof is on the plaintiff to establish his case through a preponderance of evidence. If he claims a right granted or created by law, he must prove his claim by competent evidence. He must rely on the strength of his own evidence and not on the weakness of that of his opponent x x x. In the instant case, We find that the testimonies of Rodolfo and Roberto Cuenca on the matter could not be considered as competent evidence to prove that DBP took possession of the disputed properties in blatant violation of Section 7 of Act No. 3135. Their testimonies were at best self-serving and devoid of corroboration as they did not bother to support the same with any documentary evidence.

We hasten to add that DBP did not merely rely on the weakness of the evidence of [petitioners] in resisting the latter's claim. DBP presented in court three (3) Certificates covering the sale of the disputed properties to bolster its assertion that it complied with the statutory requirements under Section 3 of Act 3135. These Certificates of Sale, prepared by Sheriffs that conducted the foreclosure proceedings, clearly reveal that DBP followed the mandate of Section 3 of Act 3135 when it foreclosed the disputed properties x x x.[10]

We likewise agree with the CA's holding that RHC cannot use the fire insurance proceeds of the Baguio Pines Hotel to redeem the said property. The appellate court, citing *Development Bank of the Philippines v. West Negros College, Inc.*, [11] correctly ruled that petitioners must pay respondent DBP the entire obligation of RHC, and not merely the purchase price of the said hotel.

Nonetheless, on the actual amount of RHC's obligation to DBP, we find it proper to reinstate the RTC's holding thereon, i.e., the loan obligation is fixed at P114,005,404.02 from the date of the RTC judgment with 12% interest per annum until fully paid.

We cannot subscribe to the CA's computation of RHC's indebtedness to DBP which was pegged at P612,476,182.08, inclusive of interest. The CA set aside the RTC's holding thereon and based its finding on the Statement of Total Claim prepared by DBP. These documents show that RHC's deficiency balance as of August 31, 2002, after deducting the total purchase price of the subject properties and the insurance proceeds plus the corresponding interest computed at 21% per annum from 1984 to August 21, 2002, is P612,476,182.08. However, as correctly pointed out by petitioners, these documents are inadmissible and constitute hearsay evidence because the persons who prepared the documents were not presented in court and subjected to cross-examination.[12]

At this point, we cite with favor the RTC's holding:

After a careful scrutiny of the records of the case, the court finds that the balance loan obligation of [petitioner] RHC with [respondent] DBP was PHP114,005,404.02 as of January 11, 1984 as stated in the application for foreclosure submitted by the parties to the court. Said amount was the basis of the protest of [petitioner] RHC in filing its complaints for injunction and declaratory relief principally relying on the principle of merger of rights or ownership of [respondent] DBP of shareholdings of [petitioner] RHC.

With the admission of witness Roberto Cuenca himself that the conversion of the loan obligations to equity took place sometime in 1980 and 1982, the filing of the complaints by [petitioner] RHC starting on February 6, 1984 protesting the claims of the [respondent] DBP in its application for foreclosure of the mortgages dated January 11, 1984 and relying on the aforesaid conversion of the loans, the instances of burning of the Pines Hotel sometime in October 1984 under the administration of [respondent] DBP which was duly noted by the Supreme Court in G.R. No. 68788, the foreclosure of all mortgaged real estate and chattel properties of [petitioner] RHC that started on February 27, 1984 or nearly one (1) month from the application of the foreclosures of [respondent] DBP, the subsequent take over by [respondent] DBP of the management of the assets of [petitioner] RHC and the sales therefrom while the cases of the protest of [petitioner] RHC were pending, in the absence of any other competent proof of proper accounting involving the loans of [petitioner] RHC, the court deems it proper and just to fix the loan obligations of [petitioner] RHC at

Php114,005,404.02.[13]

Lastly, on the issue of petitioner Cuenca's joint and solidary liability for RHC's loan obligation to DBP, we sustain the RTC's succinct holding discharging Cuenca therefrom without evidence showing his undertaking to be personally and solidarily liable for the loan obligations of RHC to DBP.

WHEREFORE, premises considered, the petition is GRANTED IN PART. The Court of Appeals decision in CA-G.R. CV No. 81363 is AFFIRMED with the MODIFICATION that the following disposition of the Regional Trial Court in Civil Case Nos. 6342, 269-R, TG-799 and 9497 is REINSTATED, to wit:

- The loan obligations of petitioner Resort Hotels Corporation to respondent Development Bank of the Philippines is fixed at P114,005,404.02 from the date of the RTC judgment with 12% interest per annum until fully paid;
- The fire insurance proceeds for the Baguio Pines Hotel which was collected by respondent Development Bank of the Philippines shall be deducted from the total loan obligations of petitioner Resort Hotels Corporation with the corresponding 12% interest per annum from the time it was received until this judgment;
- Petitioner Rodolfo Cuenca is discharged from the obligations of petitioner Resort Hotels Corporation to respondent Development Bank of the Philippines.

No pronouncement as to costs.

SO ORDERED.

Corona, (Chairperson), Velasco, Jr., Peralta, and Del Castillo,[*] JJ., concur.

[*] Additional member per Special Order No. 805 dated December 4, 2009.

[1] Penned by Associate Justice Jose C. Reyes, Jr., with Associate Justices Jose L. Sabio, Jr. and Arturo G. Tayag, concurring; rollo, pp. 8-48.

[2] Penned by Pairing Judge Rebecca R. Mariano; rollo, pp. 694-703.

[3] Rollo, pp. 10-23.

[4] Id. at 702-703.

[5] Id. at 48.

[6] Id. at 73-74.

[7] Entitled "Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgages."

[8] Homeowners Savings and Loan Bank v. Dailo, G.R. No. 153802, March 11, 2005, 453 SCRA 283, 292.

[9] Castilex Industrial Corporation v. Vasquez, Jr., 378 Phil. 1009 (1999).

[10] Rollo, pp. 32-34.

[11] G.R. No. 152359, October 28, 2002, 391 SCRA 330 (2002).

[12] See RULES OF COURT, Rule 130, Sec. 36.

[13] Rollo, pp. 700-701.

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