

GLOBAL HOLIDAY OWNERSHIP CORPORATION, PETITIONER, VS. METROPOLITAN BANK & TRUST COMPANY, RESPONDENT.

G.R. No. 184081. June 19, 2009

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition for review on certiorari assails the March 31, 2008 Decision[1] of the Court of Appeals in CA-G.R. SP No. 97287, which annulled and set aside the July 26, 2006 and October 6, 2006 Orders of the Regional Trial Court of Makati, Branch 146, granting petitioner's prayer for a writ of preliminary injunction in Civil Case No. 06-549 and directed the judge to dissolve the said writ. Also assailed is the August 7, 2008 Resolution[2] denying the motion for reconsideration.

The facts as found by the appellate court are as follows:

Global Holiday Ownership Corporation (Global for short) obtained on various dates several loans from x x x Metrobank in the total principal amount of P5,700,000.00 secured by a real estate mortgage over a condominium unit under Condominium Certificate of Title No. 29774 of the Registry of Deeds for Makati City. Upon default in the payment of the loan, x x x Global requested for a restructuring of its loan in the total principal amount of P6,375,000.00 as of September 3, 2001. (Metrobank) acceded to its request.

As x x x Global defaulted anew in the payment of its loan, it requested for another restructuring which was likewise granted by the bank. Hence, a Debt Settlement Agreement was executed by the parties on November 15, 2001 detailing a schedule of payment of the principal obligation of P6,375,000.00 within a 3-year period up to August 19, 2004 as well (sic) the interest on the principal, payable quarterly based on the prevailing market rates beginning December 2, 2001 and every 90 days thereafter, without need of notice or demand, the full payment of which shall be on or before August 29, 2002.

x x x x

Global failed to comply with the terms and conditions of the Debt Settlement Agreement. Despite demands made upon it for payment on December 22, 2005 and May 18, 2006, it still failed and refused to pay (Metrobank) the loans which are all past due.

Thus on May 22, 2006, (Metrobank) requested the Clerk of Court of the RTC of Makati City to cause the sale at public auction of CCT No. 29774 pursuant to Act 3135 as amended. The sale was scheduled on July 10, 2006 at 10:00 a.m. per notice of sheriff's sale.

Four (4) days before the date of the auction sale or on July 6, 2006, x x x Global filed the instant complaint for annulment of extrajudicial foreclosure proceedings, damages and injunction with application for TRO and/or writ of preliminary injunction. Respondent judge granted Global's application for temporary restraining order on July 7, 2006 and set the prayer for a writ of preliminary injunction for hearing on July 14, 2006. After hearing, respondent judge issued an Order on July 26, 2006 granting Global's application for a writ of preliminary injunction. (Metrobank) moved to reconsider this Order but respondent judge denied the motion in the Order dated October 6, 2006.[3]

Metrobank filed a petition for certiorari before the Court of Appeals arguing that Global is not entitled to injunctive relief because it has not shown that it had a legal right that must be protected. Metrobank thus prayed that the trial court's issuances dated July 26, 2006 and October 6, 2006 be annulled and set aside.

(Metrobank) stresses that in view of x x x Global's admission that it failed to pay its loan, the latter has definitely no right in esse to be protected as it was clearly provided in the deed of real estate mortgage and in the Debt Settlement Agreement that the mortgage can be foreclosed by (Metrobank) in case of default.

(Metrobank) contends that x x x Global's claim of not having been notified of the foreclosure proceedings is debunked by the Certification issued by the Makati Central Post Office dated August 2, 2006 stating that a copy of the notice of sheriff sale was sent to Global and was received by it on June 23, 2006. Moreover, (Metrobank's) several demand letters to x x x Global urging it to pay its overdue account with a warning that in case of failure to do, actions to protect the bank's interests will be initiated, more than satisfies the requirement of notice. Additionally, (Metrobank) emphasizes that Sec. 14 of the real estate mortgage was already superseded by Sec. 5 of the Debt Settlement Agreement whereby Global waived its right to be personally notified in case of default.

(Metrobank) argues that no personal notice of the extrajudicial foreclosure is even required as said proceeding is an action in rem where only notice by publication and posting is necessary to bind the interested parties, citing *Bobanan vs. Court of Appeals*, G.R. No. 111654, April 18, 1996. The law itself, Act No. 3135, does not require personal notice to the mortgagor. Only notice by publication and posting are required. Likewise, (Metrobank) points to Administrative Matter No. 99-10-05-0 dated February 26, 2002 (Re: Procedure in the Extrajudicial Foreclosure of Mortgage) wherein the Supreme Court acknowledged that personal notice to the debtor-mortgagor in case of extrajudicial foreclosure of real estate mortgage is not required by Act No. 3135 as the addition of such requirement can only make the proceedings cumbersome.

For its part, x x x Global avers that after it defaulted in its quarterly payment under the Debt Settlement Agreement, (Metrobank) informed it on May 30, 2003 that its account is being considered for transfer to a Special Purpose Vehicle under the SPV Act of 2002. Within the period given to signify its conformity to the plan, x x x Global wrote (Metrobank) on July 4, 2003 informing (Metrobank) that it is (sic) amenable to its proposal to transfer the loan to a special purpose vehicle company. Instead of transferring its account to a SPV Company, (Metrobank) decided to proceed with the extrajudicial foreclosure of the mortgaged property with the sheriff setting the auction sale on July 10, 2006. Such being the case, there is nothing that can be ascribed in the July 26, 2006 Order of respondent judge that could be considered whimsical, capricious, arbitrary and despotic, x x x Global asserts.

Mere failure to pay a secured obligation, according to Global, does not give the mortgagee bank the unbridled right to foreclose the mortgage, more so in this case when the interest rate on a loan is unilaterally imposed or increased by (Metrobank) without Global's consent, in violation of mutuality of contract. Besides, there is already a perfected contract between (Metrobank) and x x x Global to transfer the latter's account to a special purpose vehicle company.

Finally, x x x Global claimed that it has not waived its right to be notified of the foreclosure when it executed the Debt Settlement Agreement. The statement "without need of demand" in the debt settlement agreement refers to the payment of the principal and interest, which is different from notice of extrajudicial foreclosure that is required to be given to a mortgagor.[4]

In the assailed March 31, 2008 Decision, the Court of Appeals granted Metrobank's petition and set aside the July 26, 2006 and October 6, 2006 orders of the trial court, with a directive to dissolve the writ of preliminary injunction it issued. The appellate court found that Global had no legal right to an injunction; that Metrobank had the undeniable right to foreclose on the real estate mortgage in view of Global's default in the settlement of its obligation to the bank; that Global had not shown any legal justification to enjoin it from enforcing this right; that

it is not required that Global be personally informed of the foreclosure of its mortgaged property, since personal notice is not necessary; the applicable law - Act 3135[5] - requires only notice by publication and posting; that under Administrative Matter No. 99-10-05-0[6] in relation to Act 3135, as amended, personal notice to the debtor-mortgagor in case of extrajudicial foreclosure of real estate mortgage is not required; and that by declaring that the foreclosure proceedings were defective and null and void, the trial court's issuances granting Global's prayer for a writ of preliminary injunction constituted a premature disposition of the case on its merits, a pre-judgment that went beyond the nature of the proceeding then being taken, which was merely for the issuance of a writ of preliminary injunction.[7]

Global moved to reconsider the decision, however, it was denied by the Court of Appeals in the assailed August 7, 2008 Resolution.

Hence, this petition by Global raising the following as errors:

First Assigned Error:

The Honorable Court of Appeals (erred in) ruling x x x that personal notice to the debtor-mortgagor of the extrajudicial foreclosure is not necessary despite the parties' stipulation in their Real Estate Mortgage contract requiring personal notice thereof x x x.

Second Assigned Error:

The Honorable Court of Appeals seriously erred in its interpretation and application of Supreme Court Administrative Matter No. 99-10-05-0 dated February 26, 2002 that in extrajudicial foreclosure of real estate mortgage, personal notice to the debtor-mortgagor is not necessary.

Third Assigned Error:

The Honorable Court of Appeals erred in applying the superseded case of *Cortez v. Intermediate Appellate Court* (G.R. No. 73678, July 21, 1989) in support of its ruling that the parties' stipulation in their Real Estate Mortgage contract requiring all correspondence relative to the mortgage to be sent at the mortgagor's given address is a mere expression of "general intent" which cannot prevail over the parties' "specific intent" to apply the provisions of Act 3135 in the extrajudicial foreclosure of the mortgage as the same is contrary to subsequent rulings of the Supreme Court.

Fourth Assigned Error

The Honorable Court of Appeals erred in relying on the cases of *BPI Family Savings Bank, Inc. v. Veloso*, 436 SCRA 1; *China Banking Corporation v. CA*, 265 SCRA 327; and *Selegna Mgnt. & Devt. Corp. v. UCPB*, G.R. No. 165662, May 3, 2006, to support its findings that petitioner has no clear legal right to be protected, since the trial court's issuance of the injunctive writ was founded on the mortgagee's non-compliance with the stipulated personal notice to the mortgagor.

Fifth Assigned Error

The Honorable Court of Appeals' ruling that there was no perfected contract to transfer petitioner's account to a Special Purpose Vehicle despite its finding that respondent MBTC made a proposal thereon to GHOC is contrary to the provision of Article 1319 of the Civil Code of the Philippines since there was unqualified acceptance of the proposal.

Sixth Assigned Error

The Honorable Court of Appeals erroneously ruled that petitioner was personally notified of the foreclosure proceedings as evidenced by the Certification of the Clerk of Court of Makati RTC when such Certification is

non-existent in the records of the case.

Seventh Assigned Error

The Honorable Court of Appeals erred in denying petitioner's Motion for Reconsideration despite the apparent falsified Certification submitted by respondent thru its Comment to the motion.

Eighth Assigned Error

The Honorable Court of Appeals seriously erred in finding that the grant by the trial court of the injunctive writ is completely without justification and in grave abuse of its discretion.

The issues for resolution are: whether Metrobank's failure to serve personal notice upon Global of the foreclosure proceedings renders the same null and void; and whether the trial court properly issued a writ of injunction to prevent Metrobank from proceeding with the scheduled auction sale of Global's condominium unit.

We grant the petition.

Paragraph 14 of the real estate mortgage contract states that:

All correspondence relative to this mortgage, including demand letters, summonses, subpoenas or notifications of any judicial or extra-judicial actions shall be sent to the Mortgagor at the address hereinabove given or at the address that may hereafter be given in writing by the Mortgagor to the Mortgagee, and the mere act of sending any correspondence by mail or by personal delivery to the said address shall be valid and effective notice to the Mortgagor for all legal purposes, and the fact that any communication is not actually received by the Mortgagor, or that it has been returned unclaimed to the Mortgagee, or that no person was found at the address given, or that the address is fictitious, or cannot be located, shall not excuse or relieve the Mortgagor from the effect of such notice.[8]

This specific provision in the parties' real estate mortgage agreement is the same provision involved in the case of *Metropolitan Bank and Trust Company v. Wong*,[9] where the Court made the following pronouncement:

It is bad enough that the mortgagor has no choice but to yield his property in a foreclosure proceeding. It is infinitely worse, if prior thereto, he was denied of his basic right to be informed of the impending loss of his property. This is another instance when law and morals echo the same sentiment.

x x x x

Thus, disregarding all factual issues which petitioner interjected in his petition, the only crucial legal queries in this case are: first, is personal notice to respondent a condition sine qua non to the validity of the foreclosure proceedings? and, second, is petitioner's non-compliance with the posting requirement under Section 3, Act No. 3135 fatal to the validity of the foreclosure proceedings?

In resolving the first query, we resort to the fundamental principle that a contract is the law between the parties and, that absent any showing that its provisions are wholly or in part contrary to law, morals, good customs, public order, or public policy, it shall be enforced to the letter by the courts. Section 3, Act No. 3135 reads: "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 and city."

The Act only requires (1) the posting of notices of sale in three public places, and (2) the publication of the same in a newspaper of general circulation. Personal notice to the mortgagor is not necessary. Nevertheless, the parties to the mortgage contract are not precluded from exacting additional requirements. In this case, petitioner and respondent in entering into a contract of real estate mortgage, agreed inter alia:

"all correspondence relative to this mortgage, including demand letters, summonses, subpoenas, or notifications of any judicial or extra-judicial action shall be sent to the MORTGAGOR at 40-42 Aldeguer St., Iloilo City, or at the address that may hereafter be given in writing by the MORTGAGOR to the MORTGAGEE."

Precisely, the purpose of the foregoing stipulation is to apprise respondent of any action which petitioner might take on the subject property, thus according him the opportunity to safeguard his rights. When petitioner failed to send the notice of foreclosure sale to respondent, he committed a contractual breach sufficient to render the foreclosure sale on November 23, 1981 null and void.[10] (Emphasis supplied)

We do not see how a different outcome could have been expected in the present case which involves the same contractual provision as that in the abovementioned case - not to mention the same mortgagee. In cases subsequent to Wong, we sustained the same principle: that personal notice to the mortgagor in extrajudicial foreclosure proceedings is not necessary, unless stipulated.[11]

If respondent wanted to rid itself of the effects of the Court's pronouncement in Wong, considering that it was a party to the case and knows firsthand about the Court's disposition, it should have caused the deletion of Paragraph 14 from all its subsequent standard form real estate mortgage agreements, or if not, modified the provision or the contracts accordingly. A modification of the mortgage contract on this point, with respect to Global, would not have been difficult; an addendum would have sufficed.

Taking from Wong, we must interpret Paragraph 14 of the parties' mortgage contract as one having been made for the benefit of the mortgagor, and one which Metrobank knowingly incorporated into the agreement. Having been in the business of banking since 1962 - or for more than forty years now - it certainly had the knowledge, experience and the resources to correct any perceived oversight it was guilty of making in the past with respect to its contracts. Although we do not view Paragraph 14 to be one such oversight; as we have declared in Wong, the purpose of said stipulation is benign: to apprise the mortgagor of any action which Metrobank might take on the subject property, thus according him the opportunity to safeguard his rights. We cannot allow Metrobank to disavow its solemn covenant with Global, to turn its back on a contract which it prepared on its own, without the intervention of the other party. A party should not, after having its opportunity to enjoy the benefits of an agreement, be allowed to later disown the arrangement when the terms thereof ultimately would prove to operate against its hopeful expectations.[12]

The business of banking is imbued with public interest. It carries with it a fiduciary duty that requires high standards of integrity and performance.[13] Our decision in Wong was not a mere declaration of what the law is on a given point; its underlying message is our acknowledgment that banks must play a compassionate role amidst these changing times. That in the wake of huge profits being made from their operations, all that is required is for them to inform the borrower of the impending loss of his property when their covenants require it. This is a valid argument when viewed within the context of the principle that any attempt to vest ownership of the encumbered property in the mortgagee without proper observance of the requirements of law is against public policy.[14]

Paragraph 14 is clear that "all correspondence relative to this mortgage, including demand letters, summonses, subpoenas or notifications of any judicial or extrajudicial actions shall be sent to the mortgagor at the address hereinabove given or at the address that may hereafter be given in writing by (it)." It must be recalled that 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.[15] Taking this into context, the stipulation in the mortgage agreement requiring notice to the mortgagor

of extrajudicial actions to be taken operates as a contractual undertaking for the latter's sole benefit, such that the mortgagee is mandated to strictly abide by the same.

Metrobank claims that *Cortes v. Intermediate Appellate Court*[16] should be applied in the resolution of the present controversy. In said case, the Court held:

But in pleading their case, petitioners invoke paragraph 10 of the Deed of Mortgage (vide, p. 28, Rollo) which provides:

"10. All correspondence relative to this mortgage, including demand letters, summons, subpoenas, or notification of any judicial or extrajudicial action, shall be sent to the Mortgagor at _____ or at the address that may hereafter be given in writing by the Mortgagor to the Mortgagee."

While the above stipulation points to a place (which, notably was clearly stated) where all correspondence relative to the mortgage are to be sent, it does not specifically require that personal notice of foreclosure sale be given to petitioner. The said paragraph 10 presumes that a specific correspondence is made but does not definitely require which correspondence must be made. It would, therefore, be erroneous to say that notice of extrajudicial foreclosure to the petitioners is required for such is not the clear intention of the parties, and, thus, may not be pursued. (Rule 130, Section 10).

But even if the contrary were true, the sending of "All correspondence relative to this mortgage . . ." to the petitioners may only be deemed, at the most, as an expression of a general intent. As such, it may not prevail against the parties' specific intent that Act No. 3135 be the controlling law between them. This is so since "a particular intent will control a general one that is inconsistent with it." (Rule 130, Sec. 10). It is clear from the Deed of Mortgage that the Mortgagee Bank (DBP) may, under any of the specific circumstances enumerated, proceed to "foreclose this mortgage . . . extrajudicially under Act No. 3135, as amended." (p. 28, Rollo). Having invoked the said Act, it shall "govern the manner in which the sale and redemption shall be effected" (Sec. 1, Act 3135). And as already shown earlier Act 3135 does not require personal notice of the foreclosure sale to the mortgagor. Incidentally, it was found by the trial court that notices of the foreclosure sale were duly posted and published in accordance with law. As such, petitioners are in estoppel; they cannot now deny that they were not informed of the said sale.[17] (Emphasis supplied)

But what is stated in *Cortes* no longer applies in light of the Court's rulings in *Wong* and all the subsequent cases, which have been consistent. *Cortes* has never been cited in subsequent rulings of the Court, nor has the doctrine therein ever been reiterated. Its doctrinal value has been diminished by the policy enunciated in *Wong* and the subsequent cases; that is, that in addition to Section 3 of Act 3135, the parties may stipulate that personal notice of foreclosure proceedings may be required. Act 3135 remains the controlling law, but the parties may agree, in addition to posting and publication, to include personal notice to the mortgagor, the non-observance of which renders the foreclosure proceedings null and void, since the foreclosure proceedings become an illegal attempt by the mortgagee to appropriate the property for itself.

Thus, we restate: the general rule is that personal notice to the mortgagor in extrajudicial foreclosure proceedings is not necessary, and posting and publication will suffice. Sec. 3 of Act 3135 governing extra-judicial foreclosure of real estate mortgages, as amended by Act 4118, requires only posting of the notice of sale in three public places and the publication of that notice in a newspaper of general circulation. The exception is when the parties stipulate that personal notice is additionally required to be given the mortgagor. Failure to abide by the general rule, or its exception, renders the foreclosure proceedings null and void.[18]

Global's right to be furnished with personal notice of the extrajudicial foreclosure proceedings has been established. Thus, to continue with the extrajudicial sale without proper notice would render the proceedings null

and void; injunction is proper to protect Global's rights and to prevent unnecessary injury that would result from the conduct of an irregular sale. It is beyond question that a writ of preliminary injunction is issued to prevent an extrajudicial foreclosure, upon a clear showing of a violation of the mortgagor's unmistakable right.[19] The trial court was thus correct in granting an injunction.

Metrobank's reliance on *Ardiente v. Provincial Sheriff*[20] is misplaced. The cited case is merely a reiteration of the general rule, since the parties therein did not stipulate in their mortgage agreement that personal notice of judicial or extrajudicial actions shall be furnished the mortgagor.

Neither can the circumstance that Global received a notice of sheriff's sale from the Office of the Clerk of Court of the Regional Trial Court of Makati City cure the defect occasioned by Metrobank's violation of its covenant under the mortgage agreement. As already stated, the object of a notice of sale in a foreclosure of mortgage is not for the mortgagor's benefit, but for the public or third persons; on the other hand, the undertaking in a mortgage deed to notify the mortgagor of all judicial or extrajudicial actions relative to the mortgage is especially for the mortgagor's benefit, so that he may safeguard his rights.

Under the parties' Debt Settlement Agreement,[21] Global's obligation was reduced (Metrobank waived the penalties incurred), but the agreement carried a proviso that if such reduced obligation was not timely settled and Global defaulted on two consecutive amortizations, Metrobank shall be entitled to treat Global's obligation as outstanding, impose a penalty at the rate of 18% per annum, and/or foreclose on the real estate mortgage, without need of demand. According to Metrobank, this provision in the Debt Settlement Agreement resulted in a waiver by Global of the required personal notice under Paragraph 14 of the mortgage contract.

We disagree. Demand here relates to the principal obligation, which shall become due and demandable and shall incur interest and penalties without need of informing Global, were the conditions of the Debt Settlement Agreement not observed. It does not relieve Metrobank of its obligation under Paragraph 14 of the Mortgage Contract, which is a separate agreement, distinct and apart from the Debt Settlement Agreement. As we have said, only an addendum or modification of the mortgage agreement can relieve Metrobank of the adverse effects of Paragraph 14.

Given the merits of the case, we are not at this point inclined to dismiss the petition, on respondent's argument that there was a defective verification and certification accompanying the present petition. We can simply require petitioner to submit proof of its President Pedro P. Diomampo's authority to sign the petition in its behalf, but we no longer see the need to do the same at this late stage. Under the parties' mortgage agreement, Global was formerly named Diomampo Industries, Inc.;[22] certainly, we have been equally less rigid in previous cases.[23]

We agree with the appellate court that Metrobank had every right to choose whether to foreclose on the mortgage or to transfer Global's account to a special purpose vehicle. In this respect, Global has no right to interfere. Besides, what Metrobank conveyed to Global about transferring the latter's account to a special purpose vehicle was that it was merely considering such move; eventually, it wrote Global of its decision not to exercise the option, and proceed with foreclosure of the mortgage instead. In the first place, whether Global's account could qualify for transfer to a special purpose vehicle is not for the latter to determine; under the Special Purpose Vehicle Act of 2002,[24] the decision belongs to the appropriate regulatory authority.

Penultimately, we do not subscribe to Metrobank's argument that the foreclosure proceedings should continue, since Global is not without adequate protective remedy, like annotation of *lis pendens*, participating in the auction sale, or redemption. Annotation of *lis pendens* is unnecessary, since the issue may now be resolved at this point; participating in null and void foreclosure proceedings is no valid option, just as well as redeeming the property following a void auction sale.

Finally, the granting of the writ of preliminary injunction would not in effect dispose of the main case without trial. The granting of the writ would only enjoin the foreclosure of the mortgage for lack of personal notice, and the status quo would be maintained. It does not prevent Metrobank from foreclosing on the mortgage after giving personal notice. The only lesson to be learned from the present case is that the law must be followed to the letter; no shortcuts are allowed.[25]

WHEREFORE, the petition is GRANTED. The March 31, 2008 Decision and August 7, 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 97287 are hereby ANNULLED and SET ASIDE. The July 26, 2006 and October 6, 2006 Orders of the Regional Trial Court of Makati, Branch 146 are REINSTATED and AFFIRMED.

SO ORDERED.

Chico-Nazario, Velasco, Jr., Nachura, and Peralta, JJ., concur.

[1] Rollo, pp. 50-69; penned by Associate Justice Lucenito N. Tagle and concurred in by Associate Justices Amelita G. Tolentino and Marlene Gonzales-Sison.

[2] Id. at 71-72; penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Ramon R. Garcia and Marlene Gonzales-Sison.

[3] Id. at 51-54.

[4] Id. at 55-59.

[5] Entitled "An Act To Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real-Estate Mortgages," it was approved on March 6, 1924, and amended by Act 4118.

[6] Procedure in Extra-Judicial Foreclosure of Mortgage, effective January 15, 2000, which was further amended on March 1, 2001, and on August 7, 2001.

[7] According to the Court of Appeals, "(t)his prejudgment violates the well-entrenched principle that courts should avoid issuing a writ of preliminary injunction which in effect disposes of the main case without trial." (Rollo, p. 67; citing *Medina v. Greenfield Dev. Corp.*, 443 SCRA 150)

[8] Rollo, p. 90

[9] G.R. No. 120859, June 26, 2001, 359 SCRA 608.

[10] Id. at 610, 614-615.

[11] *Union Bank v. Court of Appeals*, G.R. No. 164910, September 30, 2005, 471 SCRA 751; *Ouano v. Court of Appeals*, G.R. No. 129279, March 4, 2003, 398 SCRA 525; *Philippine National Bank v. Nepomuceno Productions, Inc.*, G.R. No. 139479, December 27, 2002, 394 SCRA 405;. See also earlier cases: *Philippine National Bank v. Rabat*, G.R. No. 134406, November 15, 2000, 344 SCRA 706; *Concepcion v. Court of Appeals*, G.R. No. 122079, June 27, 1997, 274 SCRA 614; and *Fortune Motors (Phils.) Inc. v. Metropolitan Bank and Trust Company*, G.R. No. 115068, November 28, 1996, 265 SCRA 72; *Olizon v. Court of Appeals*, G.R. No. 107075, September 1, 1994, 236 SCRA 148.

[12] *Dela Cruz v. Court of Appeals*, G.R. No. 151298, November 17, 2004, 442 SCRA 492, citing *Philippine Aluminum Wheels, Inc v. FASGI Enterprises, Inc.*, G.R. No. 137378, October 12, 2000, 342 SCRA 722.

[13] *The Consolidated Bank and Trust Corporation v. Court of Appeals*, G.R. No.138569, September 11, 2003,

410 SCRA 562.

[14] Under Article 2088 of the Civil Code:

The creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them. Any stipulation to the contrary is null and void.

[15] Philippine National Bank v. Nepomuceno Productions Inc., supra note 11 at 411.

[16] G.R. No. 73678, July 21, 1989, 175 SCRA 545.

[17] Id. at 548-549.

[18] Development Bank of the Philippines v. Court of Appeals, G.R. No. 125838, June 10, 2003, 403 SCRA 460; Ouano v. Court of Appeals, supra note 11; Lucena v. Court of Appeals, G.R. No. L-77468, August 25, 1999, 313 SCRA 47; Roxas v. Court of Appeals, 221 SCRA 729; Metropolitan Bank and Trust Company v. Wong, supra note 9.

[19] Selegna Management & Development Corp. v. United Coconut Planters Bank, G.R. No. 165662, May 3, 2006, 489 SCRA 125, 127.

[20] G.R. No. 148448, August 17, 2004, 436 SCRA 655.

[21] Rollo, pp. 188-191.

[22] Id. at 87, 185.

[23] Shippside, Inc. v. Court of Appeals, G.R. No. 143377, February 20, 2001, 352 SCRA 334, and cited cases, where we held that:

In the instant case, the merits of petitioner's case should be considered special circumstances or compelling reasons that justify tempering the requirement in regard to the certificate of non-forum shopping. Moreover, in Loyola, Roadway, and Uy, the Court excused non-compliance with the requirement as to the certificate of non-forum shopping. With more reason should we allow the instant petition since petitioner herein did submit a certification on non-forum shopping, failing only to show proof that the signatory was authorized to do so. That petitioner subsequently submitted a secretary's certificate attesting that Balbin was authorized to file an action on behalf of petitioner likewise mitigates this oversight. (at 346-347) (Emphasis and underscoring supplied)

In Estribillo v. Department of Agrarian Reform, G.R. No. 159674, June 30, 2006, 494 SCRA 218, we reiterated the principle, in the following wise:

In Uy v. Land Bank of the Philippines, we, likewise, considered the apparent merits of the substantive aspect of the case as a special circumstance or compelling reason for the reinstatement of the case, and invoked our power to suspend our rules to serve the ends of justice. (at 233)

[24] Republic Act No. 9182.

[25] Gabriel v. Secretary of Labor, G.R. No. 115949, March 16, 2000, 328 SCRA 247.

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