

**LA URBANA, MUTUAL BUILDING AND LOAN ASSOCIATION,
PLAINTIFF AND APPELLEE, VS. CARMEN BELANDO, DEFENDANT
AND APPELLANT.**

G.R. No. 32737. September 19, 1930

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The party plaintiff obtained judgment for the following amounts against the defendant in the proper foreclosure proceedings:

"(a) Forty-one thousand seven hundred twenty-two pesos and seventy-nine centavos (P41,722.79) with interest thereon at eight and a half per cent (8 1/2%) per annum from the first of August, 1927, until the date of payment, minus the amount of premium, which, according to the law, is not to be paid in case of a premature cancellation; (&) seven thousand four hundred forty pesos and three centavos (P7,440.03) with interest thereon at one per centum (1%) a month from the 1st of August, 1927, until the date of payment; and (c) six per centum (6%) on the debt of P49,162,82, by way of attorney's fees and costs." (Page 8, Bill of Exceptions.)

After this decree had become final and three months had elapsed, as provided by law for payment thereof, the plaintiff asked the court to order the sale of the .mortgaged property at public auction.

The court granted the petition and issued a writ of execution which was returned by the sheriff, who attached the property, gave legal notice of the sale, and finally sold it at auction, adjudicating the property described under (a) in the copy of the notice of attachment, to Amparo Jaime, for P8,850, and the lots described under (b), (c), (d), (e), (f), (g) and (h) in the copy of the notice of attachment, to the plaintiff association for P6,850.

The sale was submitted for approval to the court, which approved it on September 2, 1929.

On the 7th of September of the same year, the defendant moved the court to vacate the order confirming said sale, on the ground that she had not been duly notified of the plaintiff's motion for the confirmation of the sale aforesaid; that it had been improperly and irregularly conducted inasmuch as she had not been informed of the time, place, and date of the auction by the sheriff or anybody else; and that the selling price is inadequate and prejudicial to the interests of the defendant.

Upon hearing the petition, the court denied it, and the defendant took the present appeal.

There are two main points discussed in this instance: Notice of the proceedings regarding the sale of the realty, and the selling price or the amount for which it was sold.

With reference to the notice, it appears that Casal and Jose, the defendant's attorneys, were notified of the plaintiff's motion playing that the mortgaged property be ordered sold. It appears from the certificate issued by the sheriff (pages 15-17, Bill of Exceptions), that the defendant was notified of the attachment of said property prior to the public auction sale, and that the announcement of said sale was published in three public places within the

municipality of Cavite, and in the newspaper *El Debate*. It also appears that Luciano de la Rosa, as defendant's attorney, was notified of the petition filed by the plaintiff for the approval of the sale.

Under the circumstances, we believe the record does not justify an annulment of said sale or a vacation of the decree confirming it, on the ground of lack of notification to the interested parties.

The law does not require that such notification be given personally to the party upon whose property execution is levied; and as for the attorneys, the record does not show that they did not represent the defendant at the time of receiving notification. With respect to the place, date, and time of the auction, it is presumed—and this presumption has not been rebutted—that in publishing the necessary notices, the sheriff fulfilled the requirements of the law, giving the necessary details as set forth in section 454 of the Code of Civil Procedure.

With regard to the matter of the selling price, it does not appear in the premises that the realty would bring a higher price at a resale. This circumstance is essential to rescind a sale regularly made and confirmed by a competent court, on the ground of inadequacy of price. (*National Bank vs. Gonzalez*, 45 Phil., 693.)

Furthermore, it appears that the plaintiff has not refused payment of its judgment by the defendant, and is willing to accept the balance thereof and to resell all the property adjudicated to it to the defendant, this offer having been made while the instant cause was pending in the court below (page 32, Bill of Exceptions), and reiterated in the appellee's brief (page 15).

In view of the foregoing considerations, the confirmation of the sale in question is hereby stayed for sixty days from the date the defendant receives notice hereof, in order that she may, within that period, pay the plaintiff the amount owed to it under the judgment referred to in the" beginning, deducting therefrom the sum of P8,850 received by the plaintiff as proceeds of the sale of the property made to Amparo Jaime. If within this period the defendant pays the amount of said judgment, minus the sum of P8,850 aforementioned, the plaintiff is ordered to resell to said defendant the property adjudicated to it at the auction heretofore mentioned, for such sum as the defendant shall be bound to pay by this decision. This ruling is in harmony with the doctrine laid down by this court in *Grimalt vs. Velazquez and Sy Quio* (36 Phil, 936) to this effect:

"In the present case, however, in view of the fact that the defendant had, before the sale was finally confirmed, deposited with the sheriff the full amount of the judgment, with interest and costs, there is no occasion for ordering a resale of the premises."

If said period elapses and the defendant fails to pay the sum mentioned, the sale in question shall be deemed finally confirmed. So ordered, without costs.

Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, Johns and Villa-Real, JJ., concur.

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