

**JOSE ABROGAR AND JUANA DESEAR, PETITIONERS, VS.
INTERMEDIATE APPELLATE COURT, SOCORRO DESEAR AND
BRIGIDA DESEAR, RESPONDENTS.**

G.R. No. 67970. January 15, 1988

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

This is a Petition for Review on Certiorari of the Decision of the then Intermediate Appellate Court,¹ now Court of Appeals, affirming in toto the decision of the trial court which annulled a sheriff sale.

The petitioners and private respondents were judgment plaintiffs and defendants, respectively, in a civil case² decided by the trial court and affirmed by the appellate court. For failure of the private respondents to satisfy a final and executory judgment in the said civil case amounting to P2,553.00 only, their two parcels of land with a combined market value of P75,000.00, were levied on execution and advertised for public sale by the Provincial Sheriff.^[3] The auction sale was scheduled for March 27, 1971 but the same did not push through because the trial court, upon motion of private respondent Socorro Desear, issued an order on March 26, 1971, or one day before the date fixed, postponing the auction sale on condition that the publication fees would be paid by the movant. The movant did not pay as ordered. Instead of proceeding with the auction sale on March 27, 1971, considering that there was no valid postponement, the condition thereof not having been complied with, the Provincial Sheriff of Pangasinan nevertheless held the auction almost four months later, on July 16, 1971, when the two parcels of land were sold, for, as earlier stated, P2,553.00 only. Subsequently, a Sheriffs Certificate of Sale was issued. There was no showing that private respondent Socorro Desear agreed to the July 16, 1971 auction sale. However, it is indisputable that there was neither new notice nor new publication of the said auction sale.^[4]

The trial court ruled that the Sheriffs Final Sale was null and void for lack of notice and publication and awarded attorney's fees in the amount of P2,000.00 in favor of the private respondents.^[5]

Now before us, the petitioners assigned several errors of the respondent appellate court. We summarize these assigned errors into two, to wit: (1) in ruling that there was no valid postponement of the date of the auction sale originally set for March 27, 1971; and (2) in awarding attorney's fees of P2,000.00 in the absence of any prayer and legal bases therefor.^[6]

As correctly pointed out by the respondent court (and the trial court), "the proper notice and publication in a newspaper was made for the sale at public auction scheduled for March 27, 1971. On motion, however, of private respondents, the trial court in an Order dated March 26, 1971, directed the sale set for March 27, 1971 postponed provided the movant would pay the publication fees, otherwise the public auction would continue at a date to be designated by the Sheriff. The movant did not pay the publication fees hence there was no postponement of the public auction sale since the condition precedent or suspensive condition (that of paying the publication fees) was not complied with.^[7] There was therefore no valid postponement of the public auction sale. And there was no written consent of debtor and creditor and neither was there any agreement in writing by the parties authorizing

the sheriff or the officer making the sale to adjourn the same "to any date agreed upon in writing by the parties." [8]

The public auction sale set for March 27, 1971, should have been held considering that the said schedule complied with all the requirements of law regarding a public sale, including notice and publication. The officer may adjourn the sale from day to day if it is necessary to do so for lack of time to complete the sale on the date fixed in the notice. [9] But he may not adjourn to another date unless with the written consent of the parties. [10] This was precisely the point of the appellate court when it stressed the fact that there was no written agreement between the debtor and the creditor to postpone the sale, and in fact there was no sale held on the scheduled date [11] to warrant the application of Section 24, Rule 39 of the Revised Rules of Court.

Considering, therefore, that there was no valid postponement of the original date of the auction sale on March 27, 1971, "then the alleged public auction sale on July 16, 1971 or close to four months after the original date of sale on March 27, 1971 without the proper notice and publication is null and void" as correctly pointed out by the respondent court. [12]

The second issue raised by the petitioners is meritorious.

There is neither an allegation nor evidence to support the award of P2,000.00 by way of attorney's fees in favor of private respondents. The complaint does not pray for attorney's fees. [13] Even the transcript of stenographic notes in the trial does not contain any testimony to support an award of attorney's fees. [14] As succinctly put, the claim for attorney's fees was neither pleaded nor proved!

The exercise of judicial discretion in the award of attorney's fees under Article 2208 (ii) of the New Civil Code demands a factual, legal, and equitable justification. Without such justification, the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture. [15]

Attorney's fees are recoverable not as a matter of right. [16] It is the import of Article 2208 that the award of attorney's fees is an exception and that the decision must contain an express finding of fact to bring the case within the exception and justify the grant of attorney's fees. "Just and equitable" under paragraph 11, Article 2208, New Civil Code is not a matter of feelings, but demonstration. [17] The reason for the award of attorney's fees must be stated in the text of the court's decision, otherwise, if it is stated only in the dispositive portion of the decision, the same must be disallowed on appeal. [18]

In the light of all the foregoing, the award of attorney's fees in favor of the private respondents in the case before us has no basis. Hence, attorney's fees must be disallowed.

WHEREFORE, the Decision of the respondent court declaring null and void the public auction sale on July 16, 1971 for lack of notice and publication, is hereby AFFIRMED. However, the award of attorney's fees is REVERSED. Costs against petitioners.

This Decision is IMMEDIATELY EXECUTORY.

Yap (Chairman), Melencio-Herrera, Paras, and Padilla, JJ., concur.

[1] Associate Appellate Justice Eduardo P. Caguioa, ponente. with the concurrence of Acting Presiding Appellate Justice Ramon Gaviola, Jr. and Associate Justice Ma. Rosario Quetulio-Losa, Rollo, 13-20.

[2] Rollo, 5-6, 16.

[3] Id., 34.

[4] Rollo. 6. 19.

[5] Id., 15.

[6] Id., 8.

[7] Id.. 18.

[8] Rule 39. Sec. 24, Revised Rules of Court.

[9] Id.

[10] Id.

[11] Rollo, supra.

[12] Id., 1-9.

[13] Rollo, 25 (No. 5).

[14] Id., 25 (Transcript).

[15] *Mirasol v. dela Cruz*, No. L-32552. July 31, 1978. 84 SCRA 337.

[16] *Rizal Surety & Insurance Co, v. CA, et al.*, L.-23729. May 16. 1967, 20 SCRA 61.

[17] *Jimenez v. Bucoy*. L-10221. February 28. 1958. 103 Phil. 40; *Buan v Camaganacan*, L-21560, February 28. 1966. 123 Phil. 131. 16 SCRA 321.

[18] *Mirasol v. dela Cruz*, supra.

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