

**COMMUNITY SAVINGS & LOAN ASSOCIATION, INC. AND
“HEIRS OF NARCISO MENDIOLA”; PETITIONERS, VS.
HON. COURT OF APPEALS, ADORACION ESGUERRA-CRUZ, YOLANDA
E. VILLANUEVA, AND EDGARDO E...**

G.R. No. 75786. August 31, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review on certiorari which seeks to set aside (a) the decision of the Court of Appeals dated June 30, 1986 in CA-G.R. No. 06502 which reversed the decision of the Regional Trial Court, Fourth Judicial Region, Branch 71, Antipolo, Rizal, in Civil Case No. 395-A and, (b) respondent court's resolution dated August 25, 1986 denying the petitioners' motion for reconsideration.

The facts on record are as follows:

On May 4, 1972, the spouses, Antonio C. Esguerra and Lolita M. Esguerra, predecessors-in-interest of the private respondents, secured from petitioner Community Savings and Loan Association, Inc. (CSLA), then known as Taytay Savings and Loan Association, a loan in the sum of P10,000.00. On June 6, 1972, the Esguerras obtained an additional loan of P15,000.00. These were secured by a real estate mortgage and amendment of real estate mortgage over Transfer Certificates of Title Nos. 217509 and 161966, and duly registered with the Registry of Deeds of Rizal.

The loans matured on March 28, 1976. On May 25, 1978, Antonio C. Esguerra, debtor-mortgagor died. Prior to his death, no action whatsoever was taken by petitioner CSLA to collect the loan. No demand or collection letters were sent. But in March 1979, CSLA, through counsel allegedly sent a demand letter addressed to the deceased informing him that the loan was long overdue and giving him five (5) days from receipt thereof to settle his account.

On March 30, 1979, CSLA filed a petition for extra-judicial foreclosure of real estate mortgage under Act No. 3135, before the Office of the Sheriff, Pasig, Metro Manila. Consequently, a Notice of Sheriff's Sale dated October 3, 1979 was issued. On November 5, 1979, the disputed realties were sold to CSLA as the highest bidder, and the corresponding Sheriff's Certificate of Sale issued. The sale was subsequently registered with the Registry of Deeds of Rizal on December 19, 1979.

Sometime in October 1980, the private respondents as heirs of the deceased debtor-mortgagor Antonio Esguerra, inquired from CSLA about the status of the mortgage indebtedness. CSLA instead of informing them about the foregoing developments, simply assured them not to mind the loan as the same was of a very minimal amount, not yet due and demandable, and that the same could easily be paid as the collateral was very much bigger in value.

Contrary to these assurances, CSLA executed on December 12, 1980 an affidavit of consolidation adjudicating to itself the full ownership of the properties. The affidavit of consolidation was thereafter registered with the

Registry of Deeds of Rizal and Transfer Certificate of Title No. 161966 cancelled. In lieu thereof, Transfer Certificate of Title No. 503459 was issued in the name of CSLA.

On February 14, 1981, CSLA sold the foreclosed property to its co-petitioner Narciso Mendiola for ONE HUNDRED FORTY THOUSAND (P140,000.00) PESOS. Transfer Certificate of Title 503459 was subsequently cancelled and a new one issued in Mendiola's name.

On April 8, 1981, the aggrieved private respondents filed a verified complaint for cancellation of foreclosure sale, and damages with prayer for writ of preliminary attachment alleging among others that:

"13. the foreclosure pro-ceedings as well as all transactions attendant immediately prior and/or subsequent thereto, are all void and of no force and effect; the same having been done contrary to law on the matter, and perpetrated with fraud, collusion, breach of trust and confidence on the part of the Bank and its ac-complices.

"14. The sale in favor of the defendant Bank was in excess of authority granted Bank and for a consideration disproportionate to the actual fair market value of the mortgaged properties and there inadequate, sufficient to shock the conscience of man;

"15. The defendants as hereinabove shown, deliberately in bad faith and with malice, withheld any information from the plaintiffs, despite the latters request and through the use of stealth and strategy allowed the loan to ma-ture, foreclosed the mortgage with-out benefit of notice, adjudicate the property unto itself and even failed to turn over excess of amount realized from sale to the defendant all of which acts preven-ted the plaintiffs from exercising their right of redemption;

"16. Plaintiffs learned of the fact of sale, consolidation of title and resale to defendant, NARCISO MENDIOLA, only recently and immediately thereafter confronted the Bank about it but the Bank officially refused to entertain them and even refused to furnish the plaintiffs of the documents pertinent to the mortgage and its foreclosure;

"16-A. That defendants are guilty of fraud in contracting the debt or incurring the obligation, upon which the action is brought or in concealing or disposing of the property;" (p. 73-74, Rollo)

On February 13, 1985, the trial court rendered judgment in favor of herein petitioners, to wit:

"Wherefore, in view of the foregoing considerations and on the strength thereof the Court renders JUDGMENT:

1. Dismissing the Complaint of plaintiffs and on the Counterclaim of Defendants;
2. Declaring the foreclosure of Mortgage on the property described in Transfer Certificate of Title No. 161966 in the Registry of Deeds for Rizal valid and legal and further declaring the subsequent Transfer Certificate of Title No. 504964 issued in the name of Narciso Mendiola legal and valid and ordering forthwith the cancellation therefrom of any liens or encumbrances;
3. Condemning plaintiffs jointly and severally to pay defendant Community Savings and Loan Association, Inc. of Taytay, Rizal, the sum of P2,534,356.00 representing unearned profits, business losses, damage to the good name and good will of the said bank including litigation expenses;
4. Condemning plaintiffs, jointly and severally to pay defendant Narciso Mendiola P100,000.00 moral damages; and
5. Condemning further said plaintiffs, jointly and severally to pay defendants P50,000.00 exemplary damages; and
6. Plaintiffs to pay defendants the sum equivalent to 10% of all the amounts adjudged herein to defendants as

attorney's fees; and

7. The Costs of this action.

SO ORDERED." (pp. 105, Rollo)

Forthwith, the private respondents interposed an appeal to the Court of Appeals based on the following assignment of errors:

"I

THE LOWER COURT ERRED IN NOT DECLARING THE EXTRAJUDICIAL FORECLOSURE VOID AND OF NO FORCE AND EFFECT.

II

GRANTING ARGUENDO THAT THE EXTRAJUDICIAL FORECLOSURE IS VALID, THE LOWER COURT ERRED IN NOT GIVING THE PLAINTIFFS--APPELLANTS A CHANCE TO REDEEM THE PROPERTY IN ACCORDANCE WITH THE RULING IN PEREZ, ET. AL., VS. PHILIPPINE NATIONAL BANK, ET. AL. (17 SCRA 833).

III

THE LOWER COURT ERRED IN NOT DECLARING THAT THE PUBLIC AUCTION PRICE IS GROSSLY INADEQUATE, DISPROPORTIONATE AND SHOCKING TO THE CONSCIENCE OF MAN.

IV

THE LOWER COURT ERRED IN NOT DECLARING DEFENDANT-APPELLEE NARCISO MENDIOLA A PURCHASER IN BAD FAITH.

V

THE LOWER COURT ERRED IN AWARDED EXCESSIVE DAMAGES TO THE DEFENDANTS-APPELLEES." (pp. 34-35, Rollo)

On June 30, 1986, respondent appellate court rendered a decision, as follows:

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"x x x. There is more than enough evidence in the record to conclude that the foreclosure proceedings conducted on the questioned property is null and void having been perpetrated thru fraud and that defendant Narciso Mendiola was not a purchaser for value and in good faith.

WHEREFORE, the appealed decision is hereby REVERSED and SET ASIDE and a new one declaring null and void the,

(1) Notice of the Sheriff's Sale dated October 3, 1979;

(2) Certificate of Sale in favor of defendant-appellee Mortgagee Community Savings and Loan Association, Inc. dated November 5, 1979;

(3) Affidavit of Consolidation executed by defendant-appellee mortgagee bank; and

(4) Deed of Absolute Sale dated February 14, 1981 executed by defendant-appellee mortgagee bank in favor of its co-defendant-appellee Narciso Mendiola.

The plaintiffs-appellants herein, as heirs of Antonio C. Esguerra are entitled to redeem the property in question by paying or tendering to the defendant-appellee mortgage bank the capital of the debt of Antonio Esguerra, with the stipulated interest of 12% to the date of the foreclosure, plus interest thereafter at 12% per annum. Such payment is to be made within ninety (90) days after receipt of this decision. Defendant-Appellee Community Savings and Loan Association, Inc. is hereby ordered to execute the corresponding writ of redemption in favor of the plaintiffs-appellees (sic) after receipt of such payment.

The Register of Deeds of Rizal is ordered to cancel Transfer Certificate of Titles Nos. 503459 and 504964 in the names of the Community Savings and Loan Association, Inc. and Narciso Mendiola respectively, and to issue a new one in the names of plaintiffs-appellants.

Both defendants-appellees Community Savings and Loan Association, Inc. and Narciso Mendiola are hereby ordered jointly and severally to pay the plaintiffs-appellants the sum of Thirty Thousand (P30,000.00) Pesos as moral and exemplary damages and Fifteen Thousand (P15,000.00) Pesos as attorney's fees (ten percent of the indebtedness). No costs.

SO ORDERED." (pp. 44-46, Rollo)

A motion for reconsideration filed by the petitioners before the Court of Appeals was denied in a resolution dated August 25, 1986.

Hence, the present petition filed by petitioners on the following grounds:

"1. THE RESPONDENT HON. COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN HOLDING THAT PERSONAL NOTICE TO MORTGAGORS OR HEIRS IS REQUIRED FOR THE VALIDITY OF THE EXTRA-JUDICIAL FORECLOSURE OF MORTGAGE UNDER ACT 3135" (p. 12, Rollo)

"2. THE RESPONDENT HON. COURT OF APPEALS COMMITTED SERIOUS ERRORS IN DISREGARDED (sic) CLEAR DOCUMENTED EVIDENCE OF FACTUAL NOTIFICATION OF THE STATUS OF THE LOAN AND FORECLOSURE WHICH WERE EVEN ADMITTED BY MORTGAGORS' CHILDREN" (p. 15, Rollo)

"3. THE COURT OF APPEALS ERRED IN ALLOWING REDEMPTION OF THE FORECLOSED PROPERTY AFTER THE EXPIRATION OF THE REDEMPTION PERIOD AND AFTER THE PROPERTY HAS PASSED TO A THIRD PERSON INNOCENT PURCHASER FOR VALUE AND IN CANCELLATION OF TCT No. 503459 and 504964.

THE COURT OF APPEALS ERRED IN HOLDING NARCISO MENDIOLA A BUYER IN BAD FAITH" (p. 17, Rollo)

"4. THE COURT OF APPEALS ERRED IN APPLICATION OF THE RULINGS IN 'PNB vs. COURT OF APPEALS' AND 'PEREZ vs. PNB'" (p. 20, Rollo)

"5. THE COURT OF APPEALS ERRED IN REVERSING IN TOTO THE FINDINGS OF THE TRIAL COURT FULLY SUPPORTED BY PREPONDERANT AND DOCUMENTED EVIDENCE" (p 22, Rollo)

"6. COURT OF APPEALS ERRED IN AWARDING DAMAGES IN FAVOR OF PRIVATE RESPONDENTS" (p 27. Rollo)

The decisive issue to be determined in this case is whether or not the extrajudicial foreclosure, consolidation of ownership, and resale of the subject property were perpetrated with fraud by the petitioners on the private respondents so as to justify the annulment of the foreclosure and resale and to entitle the private respondents to damages.

A thorough review of the records shows that the findings and conclusions of the Court of Appeals are amply supported by the evidence.

As found by the respondent Court of Appeals.

"x x x, it appears from the evidence that the President of the defendant-appellee mortgage bank himself admitted that he was aware of the death of debtor-mortgagor Antonio Esguerra (Tsn., November 5, 1980, p. 21-23), and yet despite this knowledge, the alleged demand letter was still addressed to the deceased debtor-mortgagor and not to his widow or to his heirs. Also, the alleged demand letter was dated March 1, 1979 while the person to whom the same was addressed died on May 25, 1978." (p. 38, Rollo)

The appellate court also found that the private respondents even went to CSLA and inquired from it about the status of the mortgage loan and the balance remaining if any. The petitioner bank assured respondents that it was going to furnish them the appropriate statement of accounts, not to worry because the mortgage indebtedness is not yet due, that it was minimal and that they would be allowed to redeem the property. The private respondents justifiably and in good faith relied on these assurances and commitments of CSLA. Were it not for these representations, the private respondents could have effected a seasonable redemption of the property, if not seasonable payment of the mortgage indebtedness (p. 39, Rollo).

Narciso Mendiola was obviously a buyer in bad faith based on the following circumstances: He never bothered to investigate the property which he supposedly bought before purchasing it; even after his purchase of the property in question, he never made any attempt to visit the same; he did not bother to inspect nor ask for the title and other documents evidencing the sale from the bank (see p. 43, Rollo); he never bothered to inform the persons occupying the land which he bought for P140,000.00, that he was the new owner; after spending the sum of P140,000.00, he never showed any interest in occupying the lot; he admitted that Mr. Virgilio Tamayo, Jr. the president of petitioner bank is his known acquaintance; and he never made any attempt to employ the legal services of his own counsel; instead he simply entrusted his defense to the petitioner bank's counsel (see p. 44, Rollo).

Thus, the respondent appellate court correctly ruled that:

" x x x, the buyer of a parcel of land who could not have failed to know or discover that the land sold to him was in the adverse possession of another, is a buyer in bad faith (St. Peter Memorial Park, Inc. vs. Cleofas, 92 SCRA 389). In the case at bar, defendant-appellee Mendiola could not have failed to know or discover that the subject property sold to him was in the adverse possession of the plaintiffs-appellants. In such case his knowledge is equivalent to registration and taints his purchase with bad faith. Hence he does not come under the protective mantle of the Land Registration Act.

Moreover, in *Serrano vs. Court of Appeals* (139 SCRA 179), the Supreme Court noted the following circumstances in finding the petitioner therein as having acted in bad. (1) That the supposed buyer in good faith and current owner never showed the slightest interest in the litigation involving the cancellation of his title and the reversion of the lot he purchased from Macaraya to the original vendor; (2) That while the purchaser lives in San Roque, Talisay, Cebu, he has never been to Mati, Davao Oriental (where the land was situated) nor has he seen the land sold to him by Macaraya; and (3) the purchaser never bothered to find out what was sold to him for P20,000.00 in 1969, whether or not the land was really worth that much or that it even existed.

Similar to the case at bar, defendant-appellee Mendiola never showed any interest in the litigation in that he never made any attempt to employ the legal services of his own counsel and simply entrusted his defense to his co-defendant bank's counsel (Tsn., November 12, 1984, pp. 25-36). Likewise, defendant-appellee Mendiola never made any attempt to visit the property which he allegedly bought up to this date (Tsn., November 20,

1984, p. 3). Nor did he bother to investigate the property whether the land really existed or not. Moreover, defendant-appellee Mendiola, never bothered to inspect the accompanying documents of the sale nor did he ask for the title of the land for inspection before or after the sale (Tsn., November 12, 1984, pp. 19-20)." (p. 43, Rollo)

On the basis of the foregoing facts on record, We cannot but agree with the conclusions of respondent court that:

"All the foregoing circumstances are badges of fraud. If taken collectively, they show an ulterior motive and a grand design on the part of the defendant-appellee mortgagee bank to acquire the property in question through that unwarranted foreclosure proceedings. To deprive the plaintiffs-appellants of their property in the light of the facts obtaining in the case at bar would be the height of injustice. x x x." (p. 38, Rollo)

The extrajudicial foreclosure in the case at bar having been tainted with fraud, we hold the same to be null and void ab initio. It follows that the consolidation of ownership of subject properties to petitioner bank as highest bidder, and its subsequent resale to Narciso Mendiola are also without legal force and effect, and that private respondents are entitled to the equitable remedy of redemption granted by the respondent appellate court.

Contrary to the petitioners' arguments, the case of Amparo G. Perez v. Philippine National Bank (17 SCRA 833) is applicable to the instant case. In Perez v. PNB the widow of the deceased debtor-mortgagor inquired from PNB about the status of her late husband's loan. Despite said inquiry and willingness to redeem, the bank without notice caused the mortgaged properties to be extra-judicially foreclosed and was itself the highest bidder.

In allowing the heirs of the deceased debtor-mortgagor to redeem the foreclosed properties, the Supreme Court held that:

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"Nevertheless, while upholding the validity of the appellant Bank's foreclosure, We cannot close our eyes to the fact that the Bank was apprised since 1947 of the death of its debtor, Vicente Perez, yet it failed and neglected to give notice of the foreclosure to the latter's widow and heirs, as expressly found by the court a quo. Such failure, in effect, prevented them from blocking the foreclosure through seasonable payment, as well as impeded their effectuating a seasonable redemption. In view of these circumstances, it is our view that both justice and equity would be served by permitting herein appellees to redeem the foreclosed property within a reasonable time, by paying the capital and interest of the indebtedness up to the time of redemption, plus foreclosure and useful expenses, less any rents and profits obtained by the Bank from and after the same entered into its possession.

Wherefore, the judgment appealed from is hereby modified, as follows:

xxx xxx xxx

(3) Declaring the appellees herein, widow and other heirs of Vicente Perez entitled to redeem the property in question by paying or tendering to the Bank the capital of the debt of Vicente Perez, with the stipulated interest to the date of foreclosure, plus interest thereafter at 12% per annum; and reimbursing the Bank the value of any useful expenditures on the said property but deducting from the amounts thus payable the value of any rents and profits derived by the appellee National Bank from the property in question. Such payment to be made within sixty (60) days after the balance is determined by the court of origin.

Neither party to recover damages or costs."

In a similar case, Philippine National Bank v. Court of Appeals (94 SCRA 357), where the bank manager assured the heirs of the debtor-mortgagor that they will be allowed to pay the mortgage obligations, and that they acted on these representations, the Supreme Court ruled that:

"On equitable principles, particularly on the ground of estoppel, we must rule against petitioner Bank. The doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith and justice, and its purpose is to forbid one to speak against its own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied thereon. The doctrine of estoppel springs from equitable principles and the equities in the case. It is designed to aid the law in the administration of justice where without its aid injustice might result. It has been applied by this Court wherever and whenever special circumstances of a case so demand.

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Perez justifiably and reasonably relied upon the assurance of the Bank's Manager that he would be allowed to pay the remaining obligation of his deceased parents and he acted on that basis. Even fair dealing alone would have required the Bank to abide by its representations, but it did not. Clearly, the equities of the case are with Perez."

Fraud and bad faith having been duly established on the part of petitioners, it follows that private respondents are necessarily entitled to the minimal damages awarded. We find the assessment by the Court of Appeals to be fair and just.

One other important point that militates against the petitioners' first ground for this petition is the fact that no notice of the foreclosure proceedings was ever sent by CSLA to the deceased mortgagor Antonio Esguerra or his heirs in spite of an express stipulation in the mortgage agreement to that effect. Said Real Estate Mortgage provides, in Sec. 10 thereof that:

"(10) All correspondence relative to this mortgage, including demand letters, summons, subpoenas, or notifications of any judicial or extrajudicial actions shall be sent to the Mortgagor at the address given above 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, x x x." (Underscoring supplied) (p. 50-51, Rollo)

The Court of Appeals, in appreciating the foregoing provision ruled that it "is an additional stipulation between the parties. As such, it is the law between them and as it is not contrary to law, morals, good customs and public policy, the same should be complied with faithfully (Article 1306, New Civil Code of the Philippines). Thus, while publication of the foreclosure proceedings in the newspaper of general circulation was complied with, personal notice is still required, as in the case at bar, when the same was mutually agreed upon by the parties as additional condition of the mortgage contract. Failure to comply with this additional stipulation would render illusory Article 1306 of the New Civil Code of the Philippines" (p. 37, Rollo).

On the issue of whether or not CSLA notified the private respondents of the extrajudicial foreclosure sale in compliance with Sec. 10 of the mortgage agreement the Court of Appeals found as follows:

"As the record is bereft of any evidence which even impliedly indicate that the required notice of the extrajudicial foreclosure was ever sent to the deceased debtor-mortgagor Antonio Esguerra or to his heirs, the extrajudicial foreclosure proceedings on the property in question are fatally defective and are not binding on the deceased debtor-mortgagor or to his heirs. (p. 37, Rollo)

Hence, even on the premise that there was no attendant fraud in the proceedings, the failure of the petitioner bank to comply with the stipulation in the mortgage document is fatal to the petitioners' cause.

The rule is that "findings of facts of the Court of Appeals are binding on the Supreme Court" (De Gala--Sison v. Manalo, 8 SCRA 595; Goduco v. Court of Appeals, 14 SCRA 282; Ramirez Telephone Corporation v. Bank of America, 29 SCRA 191; Chan v. Court of Appeals, 33 SCRA 737). This case illustrates our ruling that a question

of non-compliance with notice and publication requirements of an extrajudicial foreclosure sale is a factual issue binding upon the Supreme Court (*Reyes v. Court of Appeals*, 107 SCRA 126).

WHEREFORE, premises considered, the petition is hereby DISMISSED for lack of merit. The decision and resolution of the respondent Court of Appeals, dated June 30, 1986 and August 25, 1986 respectively, are hereby AFFIRMED.

SO ORDERED.

Feliciano, Bidin, and Cortes, JJ., concur.

Fernan, J., (Chairman), no part pursuant to May 13, 1987, Resolution of the Court's Division.

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