

SEVERINO P. DE GUZMAN, PETITIONER, VS. HON. COURT OF APPEALS AND LORENZO P. BENITEZ, RESPONDENTS.

G.R. No. 82490. September 08, 1994

Ponente: VITUG, J.

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VITUG, J.:

In this petition for review, Severino de Guzman faults respondent Court of Appeals in setting aside the decision of the Regional Trial Court, Branch 102-Quezon City, and in declaring to be null and void the extrajudicial foreclosure proceedings commenced by de Guzman.

The appellate court made the following abstract of the case and the facts:

"On July 21, 1982, Severino de Guzman deposited with the Solid Homes and Loan Association, Inc. (Solid Homes, for brevity), the amount of P500,000.00 for which he was issued a Certificate of Time Deposit No. 7386, at the stipulated rate of interest of 18% per annum to mature on July 22, 1984 (Exh. 'A').

"To secure payment of the time deposit, Lorenzo P. Benitez as officer of Solid Homes, executed in favor of De Guzman a 'Deed of Real Estate Mortgage' (Exh. '3') over a parcel of land located at Diliman, Quezon City, containing an area of 690 square meters and covered by TCT No. 265322 of the Register of Deeds of Quezon City. In this Real Estate Mortgage, it was expressly stipulated that the right of De Guzman to foreclose shall only accrue upon the arrival of the pre-designated date of maturity on July 22, 1984 and should no payment be made by Solid Homes on the time deposit.

"On December 1, 1983, Benitez received a notice of Sheriff's Sale dated November 17, 1983 (Exh. 'C') from the office of the Ex-Officio Sheriff of Quezon City stating among others that: 'the terms and conditions of said mortgage contract have been violated, due to the mortgagor's failure to pay the sum of P500,000.00 plus interests' and that the Sheriff shall sell the mortgaged property at public auction on December 15, 1983 at 10:00 o'clock a.m.

"To prevent the scheduled foreclosure and sale of the mortgaged property, Benitez filed this action for injunction against De Guzman and the Ex-Officio Sheriff of Quezon City.

"In answer to the petition for injunction, De Guzman countered that the amended petition states no valid cause of action; the Court lacks jurisdiction over the subject matter of the amended petition considering the amount involved; the petitioner is barred by estoppel, laches and the statute of limitations from filing the amended petition; the amended petition is merely a devious scheme perpetrated by Benitez in connivance with Solid Homes, which is controlled by Victorio and Purita Soliven to prejudice De Guzman; that although the property mortgaged as collateral or security for the time deposit of P500,000.00 appears in Benitez' name, to all intents and purposes, Benitez is not a third party mortgagor as his personality is merged with that of Solid Homes; and finally that the right of De Guzman to foreclose said mortgage, may by agreement, be exercised 'for causes and events which supervene after execution of the mortgage deed' such as bankruptcy of Solid Homes, resignation and cessation of Benitez as officer of Solid Homes, the failure of Solid Homes and/or Benitez to put up another collateral sufficient to guarantee the time deposit/money placement; hence, the withdrawal thereof and/or foreclosure and sale are attributable to both Benitez and Solid Homes." [1]

The Regional Trial Court issued a restraining order; accordingly, the scheduled foreclosure sale on 15 December 1983 did not materialize. Upon arrival of the maturity date on 22 July 1984 of the time deposit with Solid Homes, de Guzman filed with the trial court an "Urgent Motion to Consider Petition for Writ of Preliminary Prohibitory Injunction Moot and Academic." The trial court issued a resolution, dated 01 August 1984, which stated:

"Respondent's 'Urgent Motion' dated July 31, 1984, is granted.

"WHEREFORE, the temporary restraining order of this Court, dated December 14, 1983, is declared functus officio.

"SO ORDERED." [2]

Thereupon, the auction sale was reset for 19 September 1984. On said date, the property was sold at auction to de Guzman, being the highest bidder, and a Sheriff's certificate of sale was issued to his favor. Benitez failed to redeem the mortgaged property; hence, on 20 September 1985, de Guzman consolidated his ownership thereover. A new transfer certificate of title (TCT No. 335085) was issued in the name of de Guzman by the Register of Deeds of Quezon City.

On 13 December 1985, the trial court rendered, in the injunction case, its decision, the dispositive portion of which read:

"WHEREFORE, judgment is hereby rendered in favor of respondent, as follows:

"(1) Dismissing petitioner's petition, with costs against petitioner; and

"(2) Ordering petitioner to pay respondent Severino de Guzman (on his counterclaim) the sum of P6,000.00 as attorney's fees.

"SO ORDERED." [3]

Forthwith, de Guzman filed a motion to amend the decision. Finding the motion to be in order, the trial court issued its 22nd January 1986 resolution; to wit:

"After a careful study of private respondent's 'Motion to Amend Decision' dated January 8, 1986, to which petitioner filed no objection despite the order of this Court of January 9, 1986, the Court finds said motion to be well taken and, consequently, the dispositive portion of the decision of this Court dated December 13, 1985 is amended to read as follows:

"(1) Dismissing petitioner's petition, with costs against petitioner; and

'(2) Ordering petitioner to pay respondent Severino de Guzman (on his counterclaim) the sum of P50,000.00 (earnest money) and the sum of P6,000.00 as attorney's fees.'

"SO ORDERED." [4]

On appeal, the Court of Appeals reversed the trial court and held:

"WHEREFORE, the decision appealed from is hereby SET ASIDE and judgment is rendered:

"(1) Declaring as null and void all the incidents of the foreclosure proceedings made and initiated by De Guzman prior to July 22, 1984.

"(2) Ordering the appellee De Guzman to pay appellant expenses of litigation and costs of suit." [5]

His motion for reconsideration having been denied by the appellate court, de Guzman filed with this Court the instant petition.

We sustain the petition.

While, concededly, the foreclosure sale scheduled prior to the maturity date (22 July 1984) of the time deposit was indeed a bit premature, nevertheless, no harm was done since the foreclosure was timely aborted by the restraining order of the trial court. The actual foreclosure sale was, in fact, conducted only on 19 September 1984, following the lifting by the trial court of the restraining order, at which time the debt had already matured and remained unpaid.

Private respondent assails the failure of petitioner to file with the Sheriff a new petition for extrajudicial foreclosure of the mortgage. Such failure is not all that critical. What must be considered primordial is the due and proper observance prior to the sale of the requirements under Act No. 3135, as amended by Act No. 4118, which evidently have been complied with.

The records would reveal that, following the maturity of the obligation secured by the mortgage and the lifting of the restraining order of the court a quo, (a) a new notice was sent to the mortgagor, (b) publication of the sale was again made in a newspaper of general circulation for three (3) consecutive weeks, (c) the foreclosure sale was conducted in accordance with the notice sent out and published, and (d) the sheriff issued a certificate of sale, which was duly acknowledged and recorded, thus meeting anew the conditions set forth by the law.

WHEREFORE, the petition for review on certiorari is GRANTED. The questioned decision is REVERSED and SET ASIDE and the decision of the Regional Trial Court is REINSTATED. No costs.

SO ORDERED.

Feliciano, (Chairman), Romero, and Melo, JJ., concur.

Bidin, J., on leave.

[1] Rollo, pp. 29-30.

[2] Rollo, p. 39.

[3] Rollo, p. 58.

[4] Rollo, p. 59.

[5] Rollo, pp. 33-34.

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