

FLORENTINO CRUZ AND LINA CRUZ, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS AND GOVERNMENT SERVICE INSURANCE SYSTEM, RESPONDENTS.

G.R. No. 90369, October 31, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The enforceability of a deed of sale with assumption of mortgage of property encumbered to the Government Service Insurance System (GSIS), entered into without the previous consent of the latter, is the center of controversy in this petition.

On May 22, 1970, petitioners bought a parcel of land with an area of approximately 250 square meters from the spouses Oscar and Eva De los Reyes, registered owners thereof, under Transfer Certificate of Title (TCT) No. 135319 issued by the Register of Deeds of Quezon City. At the time of the sale of the property, it was mortgaged to the GSIS for P20,000.00 which obligation petitioners assumed.

The mortgage contract of the De los Reyes spouses with the GSIS stipulates that "the mortgagor shall not sell, dispose of, mortgage nor in any manner encumber the mortgaged property without the prior consent of the mortgagee."^[1]

Petitioner Florentino Cruz went to the Real Estate Department of the GSIS to secure its approval. He was interviewed by one Mr. Tobias Jaylo to whom he left a copy of the deed of sale with assumption of mortgage,^[2] and his letter request that he be allowed to assume the mortgage obligation of the De los Reyes spouses. After two weeks he returned to Mr. Jaylo only to be informed that the records of the transaction with the De los Reyes spouses could not be found, hence, his request could not be acted upon. As his follow-up proved fruitless, he left the matter to Mr. Jaylo.

On March 12, 1974, petitioner Florentino Cruz wrote to the GSIS wherein petitioner asked for the status of the loan and for a notification as to arrearages, if any, for liquidation. The GSIS denied having received this letter.

In the meanwhile, the amortization of the De los Reyes spouses fell due and the GSIS demanded payment. When the arrearages remained unpaid, the GSIS applied for extrajudicial foreclosure of the property. The foreclosure proceeding was actually held on September 29, 1978. After the one-year period of redemption expired, the GSIS consolidated its ownership and TCT No. 281934 was issued in its favor on September 25, 1981.

On September 17, 1982, the GSIS wrote a letter to petitioner Florentino Cruz and informed him that he was given the opportunity to repurchase the property for P70,000.00 and to pay the monthly rental of P600.00 beginning September 1978 until the corresponding contract of sale shall have been made in favor of petitioners. Petitioner rejected the offer and insisted that he be allowed to liquidate the mortgage indebtedness on the property as of May 20, 1979.^[3]

Hence, the Cruz spouses filed a complaint for annulment of foreclosure, reconveyance and damages in the

Regional Trial Court of Quezon City.

On August 14, 1984, the Regional Trial Court rendered its decision dismissing the complaint with costs de oficio.

Petitioners appealed to the Court of Appeals wherein in due course a decision was rendered on September 25, 1989 affirming the appealed decision with costs against petitioners.

Now come the petitioners with the herein petition for review on certiorari raising the sole issue of whether or not the respondent Court of Appeals committed errors of law in affirming the order of dismissal issued by the lower court.

The petition is devoid of merit.

In the first place, there can be no question that petitioners purchased the property in question from the De los Reyes spouses by virtue of a deed of sale with assumption of mortgage of the property without the previous consent of the respondent GSIS. Petitioners thereby took a calculated risk knowing as they did that under the mortgage contract of the De los Reyes spouses with the GSIS, its previous consent must be secured in transactions of this nature. When petitioners brought this action to question the validity of the extrajudicial foreclosure sale of the property, the burden was on them to prove their allegations. Unfortunately, petitioners failed to discharge their burden.

In the second place, the contention of petitioners, to the effect that the said foreclosure proceeded without their knowledge or prior notice to them and that this invalidated the foreclosure proceeding, is untenable. Since there is no privity of contract between the petitioners and the GSIS, the latter had no legal duty to notify the petitioners of the said foreclosure proceeding. Moreover, the prior publication of the subject extrajudicial foreclosure sale in a newspaper of general circulation operates as a constructive notice to the whole world, including petitioners, of the said sale.

In the third place, there is no provision of law which requires that when said extrajudicial sale is conducted special notice to petitioners as alleged successors-in-interest of the mortgagors should be made. Section 3 of Act No. 3135 governing extrajudicial foreclosure sales provides as follows:

"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 or city."

The foregoing provision of law does not require any particular notice to the mortgagors much less to their alleged successors-in-interest like the petitioners herein.

In the fourth place, the court a quo correctly observed that petitioners have not established a cause of action against the respondent GSIS as its previous written approval of the deed of sale with assumption of mortgage had not been secured by the petitioners. While it is true that the petitioners attempted to secure such approval subsequently by submitting a copy of the deed to the GSIS through one Mr. Jaylo, the fact remains that the ultimate approval sought had not been granted.

In the fifth place, the Court takes note of the fact that while petitioners appear to have purchased the subject property in 1970, they took no positive steps to pay the mortgage obligation in the amount of P20,000.00 to the respondent GSIS except through its letter dated March 12, 1974 receipt of which is even denied by the GSIS. They knew that the mortgage obligation they assumed is to be paid in monthly amortizations. They should have paid the same as stipulated but they failed to do so. Thus, they have only themselves to blame.

Moreover, even after the property was foreclosed and its ownership was consolidated in the name of the respondent GSIS, in a letter to petitioners dated September 7, 1982, the GSIS nevertheless gave them the opportunity to redeem the property for P70,000.00 plus an amount corresponding to reasonable rentals therefrom. However, petitioners rejected this opportunity and instead insisted that they be allowed to liquidate the mortgage indebtedness of the property.

Lastly, the petitioners appeal that on the basis of equity they should be allowed to redeem the property by liquidating the mortgage indebtedness thereof. The Court finds no cogent basis to grant this. As earlier stated petitioners took the risk of entering into a deed of sale with assumption of mortgage to the property without securing the prior consent of the respondent GSIS. Besides, petitioners did not pay the amortization due to stave off a foreclosure. The recourse of the petitioners, if at all, should be against the De los Reyes spouses and not against the GSIS.

WHEREFORE, the petition is DISMISSED without pronouncement as to costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Page 61, Rollo.

[2] Exhibit A.

[3] Exhibit D.

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