

**GRAND FARMS, INC. AND PHILIPPINE SHARES CORPORATION,
PETITIONERS, VS. COURT OF APPEALS, JUDGE ADRIAN R. OSORIO,
AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH
171, VALEN...**

G.R. No. 91779. February 07, 1991

Ponente: REGALADO, J.

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REGALADO, J.:

The propriety of a summary judgment is raised in issue in the instant petition, with herein petitioners appealing the decision[1] of respondent court in CA-G.R. SP No. 17535, dated November 29, 1989, which found no grave abuse of discretion on the part of respondent judge in denying petitioners' motion for summary judgment.[2]

The antecedents of this case are clear and undisputed. Sometime on April 15, 1988, petitioners filed Civil Case No. 2816-V-88 in the Regional Trial Court of Valenzuela, Metro Manila for annulment and/or declaration of nullity of the extrajudicial foreclosure proceedings over their mortgaged properties, with damages, against respondents clerk of court, deputy sheriff and herein private respondent Banco Filipino Savings and Mortgage Bank.[3]

Soon after private respondent had filed its answer to the complaint, petitioners filed a request for admission by private respondent of the allegation, inter alia, that no formal notice of intention to foreclose the real estate mortgage was sent by private respondent to petitioners.[4]

Private respondent, through its deputy liquidator, responded under oath to the request and countered that petitioners were "notified of the auction sale by the posting of notices and the publication of notice in the Metropolitan Newsweek, a newspaper of general circulation in the province where the subject properties are located and in the Philippines on February 13, 20 and 28, 1988." [5]

On the basis of the alleged implied admission by private respondent that no formal notice of foreclosure was sent to petitioners, the latter filed a motion for summary judgment contending that the foreclosure was violative of the provisions of the mortgage contract, specifically paragraph (k) thereof which provides:

"(k) All correspondence relative to this Mortgage, including demand letters, summons, subpoena or notifications of any judicial or extra-judicial 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, and the fact that any communication is not actually received by the Mortgagor, or that it has been returned unclaimed to the Mortgagee, or that no person was found at the address given, or that the address is fictitious, or cannot be located, shall not excuse or relieve the Mortgagor from the effects of such notice;" [6]

The motion was opposed by private respondent which argued that petitioners' reliance on said paragraph (k) of

the mortgage contract fails to consider paragraphs (b) and (d) of the same contract, which respectively provide as follows:

"b) x x x For the purpose of extra-judicial foreclosure, the Mortgagor (plaintiff) hereby appoints the Mortgagee (BF) his attorney-in-fact to sell the property mortgaged, to sign all documents and perform any act requisite and necessary to accomplish said purpose and to appoint its substitutes as such attorney-in-fact, with the same powers as above-specified. The Mortgagor hereby expressly waives the term of thirty (30) days or any other term granted or which may hereafter be granted him by law as the period which must elapse before the Mortgagee shall be entitled to foreclose this mortgage, it being specifically understood and agreed that the said Mortgagee may foreclose this mortgage at any time after the breach of any conditions hereof. x x x"

x x x

"d) Effective upon the breach of any conditions of the mortgage and in addition to the remedies herein stipulated, the Mortgagee is hereby likewise appointed attorney-in-fact of the Mortgagor with full powers and authority, with the use of force, if necessary, to take actual possession of the mortgaged property, without the necessity for any judicial order or any permission of power to collect rents, to eject tenants, to lease or sell the mortgaged property, or any part thereof, at public or private sale without previous notice or advertisement of any kind and execute the corresponding bills of sale, lease or other agreement that may be deemed convenient, to make repairs or improvement to the mortgaged property and pay for the same and perform any other act which the Mortgagor may deem convenient x x x"[7]

On February 27, 1989, the trial court issued an order, denying petitioners' motion for summary judgment.[8] Petitioners' motion for reconsideration was likewise denied by respondent judge on the ground that genuine and substantial issues exist which require the presentation of evidence during the trial, to wit: (a) whether or not the loan has matured; (b) whether or not private respondent notified petitioners of the foreclosure of their mortgage; (c) whether or not the notice by publication of the foreclosure constitutes sufficient notice to petitioners under the mortgage contract; (d) whether or not the applicant for foreclosure of the mortgage was a duly authorized representative of private respondent; and (e) whether or not the foreclosure was enjoined by a resolution of this Court.[9]

Petitioners thereafter went on a petition for certiorari to respondent court attacking said orders of denial as having been issued with grave abuse of discretion. As earlier adverted to, respondent court dismissed the petition, holding that no personal notice was required to foreclose since private respondent was constituted by petitioners as their attorney-in-fact to sell the mortgaged property. It further held that paragraph (k) of the mortgage contract merely specified the address where correspondence should be sent and did not impose an additional condition on the part of private respondent to notify petitioners personally of the foreclosure. Respondent court also denied petitioners' motion for reconsideration, hence the instant petition.

We rule for petitioners.

The Rules of Court authorize the rendition of a summary judgment if the pleadings, depositions and admissions on file, together with the affidavits, show that, except as to the amount of damages, there is no issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.[10] Although an issue may be raised formally by the pleadings but there is no genuine issue of fact, and all the facts are within the judicial knowledge of the court, summary judgment may be granted.[11]

The real test, therefore, of a motion for summary judgment is whether the pleadings, affidavits and exhibits in support of the motion are sufficient to overcome the opposing papers and to justify a finding as a matter of law that there is no defense to the action or that the claim is clearly meritorious.[12]

Applying said criteria to the case at bar, we find petitioners' action in the court below for annulment and/or declaration of nullity of the foreclosure proceedings and damages ripe for summary judgment. Private respondent tacitly admitted in its answer to petitioners' request for admission that it did not send any formal notice of foreclosure to petitioners. Stated otherwise, and as is evident from the records, there has been no denial by private respondent that no personal notice of the extrajudicial foreclosure was ever sent to petitioners prior thereto. This omission, by itself, rendered the foreclosure defective and irregular for being contrary to the express provisions of the mortgage contract. There is thus no further necessity to inquire into the other issues cited by the trial court, for the foreclosure may be annulled solely on the basis of such defect.

While private respondent was constituted as their attorney-in-fact by petitioners, the inclusion of the aforequoted paragraph (k) in the mortgage contract nonetheless rendered personal notice to the latter indispensable. As we stated in *Community Savings & Loan Association, Inc., et al. vs. Court of Appeals, et al.*,^[13] where we had the occasion to construe an identical provision:

"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.' (Emphasis in the original text.)

"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."

We do not agree with respondent court that paragraph (k) of the mortgage contract in question was intended merely to indicate the address to which the communications stated therein should be sent. This interpretation is rejected by the very text of said paragraph as above construed. We do not see any conceivable reason why the interpretation placed on an identically worded provision in the mortgage contract involved in *Community Savings & Loan Association, Inc.* should not be adopted with respect to the same provision involved in the case at bar.

Nor may private respondent validly claim that we are supposedly interpreting paragraph (k) in isolation and

without taking into account paragraphs (b) and (d) of the same contract. There is no irreconcilable conflict between, as in fact a reconciliation should be made of, the provisions of paragraphs (b) and (d) which appear first in the mortgage contract and those in paragraph (k) which follow thereafter and necessarily took into account the provisions of the preceding two paragraphs.[14] The notices respectively mentioned in paragraphs (d) and (k) are addressed to the particular purposes contemplated therein. Those mentioned in paragraph (k) are specific and additional requirements intended for the mortgagors so that, thus apprised, they may take the necessary legal steps for the protection of their interests such as the payment of the loan to prevent foreclosure or to subsequently arrange for redemption of the property foreclosed.

What private respondent would want is to have paragraph (k) considered as non-existent and consequently disregarded, a proposition which palpably does not merit consideration. Furthermore, it bears mention that private respondent having caused the formulation and preparation of the printed mortgage contract in question, any obscurity that it imputes thereto or which supposedly appears therein should not favor it as a contracting party.[15]

Now, as earlier discussed, to still require a trial notwithstanding private respondent's admission of the lack of such requisite notice would be a superfluity and would work injustice to petitioners whose obtention of the relief to which they are plainly and patently entitled would be further delayed. That undesirable contingency is obviously one of the reasons why our procedural rules have provided for summary judgments.

WHEREFORE, the decision appealed from is hereby REVERSED and SET ASIDE and this case is REMANDED to the court of origin for further proceedings in conformity with this decision. This judgment is immediately executory.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, and Sarmiento, JJ., concur.
Paras, J., no part.

[1] Penned by Justice Fernando A. Santiago, with Justices Oscar M. Herrera and Jesus M. Elbinias concurring.

[2] Rollo, 19.

[3] Rollo, CA-G.R. SP No. 17535, 11-17.

[4] Ibid., 72-75.

[5] Ibid., 88-91.

[6] Ibid., 48, 94-103.

[7] Ibid., 106-112.

[8] Ibid., 113.

[9] Ibid., 120-121.

[10] Sec. 3, Rule 34; Galicia vs. Polo, et al., 179 SCRA 371 (1989); Guevarra, et al. vs. Court of Appeals, et al., 124 SCRA 297 (1983); Villanueva vs. National Marketing Corporation, 28 SCRA 729 (1969).

[11] Ramos vs. Court of Appeals, et al., 179 SCRA 719 (1989), citing Miranda vs. Malate Garage & Taxicab, Inc., 99 Phil. 670 (1956).

[12] Galicia, et al. vs. Polo, et al., supra; Estrada vs. Consolacion, et al., 71 SCRA 523 (1976).

[13] 153 SCRA 564 (1987).

[14] Art. 1374, Civil Code.

[15] Art. 1377, id.

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