

PHILIPPINE NATIONAL BANK, PETITIONER, VS. THE COURT OF APPEALS AND EPIFANIO DE LA CRUZ, RESPONDENTS.

G.R. No. 98382. May 17, 1993

Ponente: MELO, J.

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MELO, J.:

The notices of sale under Section 3 of Act No. 3135, as amended by Act No. 4118, on extra-judicial foreclosure of real estate mortgage are required to be posted 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 notices shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city.

Respondent court, through Justice Filemon Mendoza with whom Justices Campos, Jr. and Aldecoa, Jr. concurred, construed the publication of the notices on March 28, April 11 and 12, 1969 as a fatal announcement and reversed the judgment appealed from by declaring void, *inter alia*, the auction sale of the foreclosed pieces of realty, the final deed of sale, and the consolidation of ownership (p. 27, Rollo).

Hence, the petition at bar, premised on the following backdrop lifted from the text of the challenged decision:

The facts of the case as related by the trial court are, as follows:

"This is a verified complaint brought by the plaintiff for the reconveyance to him (and resultant damages) of two (2) parcels of land mortgaged by him to the defendant Philippine National Bank (Manila), which the defendant allegedly unlawfully foreclosed. The defendant then consolidated ownership unto itself, and subsequently sold the parcels to third parties. The amended Answer of the defendant states on the other hand that the extrajudicial foreclosure, consolidation of ownership, and subsequent sale to the third parties were all valid, the bank therefore counterclaims for damages and other equitable remedies.

x x x

From the evidence and exhibits presented by both parties, the Court is of the opinion that the following facts have been proved: Two lots, located at Bunlo, Bocaue, Bulacan (the first covered by Torrens Certificate No. 16743 and possessed of an area of approximately 3,109 square meters: the second covered by Torrens Certificate No. 5787, possessed of an area of around 610 square meters, and upon which stood a residential-commercial building were mortgaged to the defendant Philippine National Bank. The lots were under the common names of the plaintiff (Epifanio dela Cruz), his brother (Delfin) and his sister (Maria). The mortgage was made possible because of the grant by the latter two to the former of a special power of attorney to mortgage the lots to the defendant. The lots were mortgaged to guarantee the following promissory notes:

(1) a promissory note for P12,000.00, dated September 2, 1958, and payable within 69 days (date of maturity - Nov. 10, 1958);

(2) a promissory note for P4,000.00, dated September 22, 1958, and payable within 49 days (date of maturity - Nov. 10, 1958);

(3) a promissory note for P4,000.00, dated June 30, 1958¹/ and payable within 120 days (date of maturity-Nov. 10, 1958) See also Annex C of the complaint itself).

[1/ This date of June 30, 1958 is disputed by the plaintiff who claims that the correct date is June 30, 1961, which is the date actually mentioned in the promissory note. It is however difficult to believe the plaintiff's contention since if it were true and correct, this would mean that nearly three (3) years elapsed between the second and the third promissory note; that at the time the third note was executed, the first two had not yet been paid by the plaintiff despite the fact that the first two were supposed to be payable within 69 and 49 days respectively. This state of affairs would have necessitated the renewal of said two promissory notes. No such renewal was proved, nor was the renewal ever alleged. Finally, and this is very significant: the third mentioned promissory note states that the maturity date is Nov. 10, 1958. Now, then, how could the loan have been contracted on June 30, 1961? It will be observed that in the bank records, the third mentioned promissory note was really executed on June 30, 1958 (See Exhs. 9 and 9-A). The Court is therefore inclined to believe that the date "June 30, 1961" was a mere clerical error and that the true and correct date is June 30, 1958. However, even assuming that the true and correct date is June 30, 1961, the fact still remains that the first two promissory notes had been guaranteed by the mortgage of the two lots, and therefore, it was legal and proper to foreclose on the lots for failure to pay said two promissory notes.]

On September 6, 1961, Atty. Ramon de los Reyes of the bank (PNB) presented under Act No. 3135 a foreclosure petition of the two mortgaged lots before the Sheriff's Office at Malolos, Bulacan; accordingly, the two lots were sold or auctioned off on October 20, 1961 with the defendant PNB as the highest bidder for P28,908.46. On March 7, 1963, Sheriff Leopoldo Palad executed a Final Deed of Sale, in response to a letter-request by the Manager of the PNB (Malolos Branch). On January 15, 1963, a Certificate of Sale in favor of the defendant was executed by Sheriff Palad. The final Deed of Sale was registered in the Bulacan Registry of Property on March 19, 1963. Inasmuch as the plaintiff did not volunteer to buy back from the PNB the two lots, the PNB sold on June 4, 1970 the same to spouses Conrado de Vera and Marina de Vera in a "Deed of Conditional Sale". (Decision, pp. 3-5; Amended Record on Appeal, pp. 96-98).

After due consideration of the evidence, the CFI on January 22, 1978 rendered its Decision, the dispositive portion of which reads:

"WHEREFORE, PREMISES CONSIDERED, the instant complaint against the defendant Philippine National Bank is hereby ordered DISMISSED, with costs against the plaintiff. The counterclaim against the plaintiff is likewise DISMISSED, for the Court does not believe that the complaint had been made in bad faith.

SO ORDERED." (Decision, p. 8; Amended Record on Appeal, p. 100)

Not satisfied with the judgment, plaintiff interposed the present appeal assigning as errors the following:

"I

THE LOWER COURT ERRED IN HOLDING IN FOOTNOTE 1 OF ITS DECISION THAT IT IS THEREFORE INCLINED TO BELIEVE THAT THE DATE "JUNE 30, 1962" WAS A MERE CLERICAL ERROR AND THAT THE TRUE AND CORRECT DATE IS JUNE 30, 1958. IT ALSO ERRED IN HOLDING IN THE SAME FOOTNOTE 1 THAT "HOWEVER, EVEN ASSUMING THAT THE TRUE AND CORRECT DATE IS JUNE 30, 1961, THE FACT STILL REMAINS THAT THE FIRST TWO PROMISSORY NOTES HAD BEEN GUARANTEED BY THE MORTGAGE OF THE TWO LOTS, AND THEREFORE, IT WAS

LEGAL AND PROPER TO FORECLOSE ON THE LOTS FOR FAILURE TO PAY SAID TWO PROMISSORY NOTES". (page 115, Amended Record on Appeal)

II

THE LOWER COURT ERRED IN NOT HOLDING THAT THE PETITION FOR EXTRAJUDICIAL FORECLOSURE WAS PREMATURELY FILED AND IS A MERE SCRAP OF PAPER BECAUSE IT MERELY FORECLOSED THE ORIGINAL AND NOT THE AMENDED MORTGAGE.

III

THE LOWER COURT ERRED IN HOLDING THAT "IT IS CLEAR THAT THE AUCTION SALE WAS NOT PREMATURE". (page 117, Amended Record on Appeal)

IV

THE LOWER COURT ERRED IN HOLDING THAT "SUFFICE IT TO STATE THAT ACTUALLY THE POWER OF ATTORNEY GIVEN TO THE PNB WAS EMBODIED IN THE REAL ESTATE MORTGAGE (EXB. 10) WHICH WAS REGISTERED IN THE REGISTRY OF PROPERTY OF BULACAN AND WAS ANNOTATED ON THE TWO TORRENS CERTIFICATES INVOLVED" (page 118, Amended Record on Appeal).

V

THE LOWER COURT ERRED IN HOLDING THAT "THE NOTICES REQUIRED UNDER SEC. 3 OF ACT NO. 3135 WERE ALL COMPLIED WITH" AND "THAT THE DAILY RECORD x x x IS A NEWSPAPER OF GENERAL CIRCULATION (pages 117-118, Amended Record on Appeal).

VI

THE LOWER COURT ERRED IN NOT DECLARING THE CERTIFICATE OF SALE, FINAL DEED OF SALE AND AFFIDAVIT OF CONSOLIDATION, NULL AND VOID.

VII

THE LOWER COURT ERRED IN NOT ORDERING DEFENDANT TO RECONVEY TO PLAINTIFF THE PARCELS OF LAND COVERED BY T.C.T. NOS. 40712 AND 40713 OF BULACAN (page 8, Amended Record on Appeal)

VIII

THE LOWER COURT ERRED IN NOT ORDERING DEFENDANT TO PAY TO PLAINTIFF REASONABLE AMOUNTS OF MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES (page 8, Amended Record on Appeal).

IX

THE LOWER COURT ERRED IN DISMISSING THE INSTANT COMPLAINT AGAINST THE PHILIPPINE NATIONAL BANK, WITH COSTS AGAINST THE PLAINTIFF. (page 118, Amended Record on Appeal)." (Brief for Plaintiff-Appellant, pp. 1-4) (pp. 17-21, Rollo)

With reference to the pertinent issue at hand, respondent court opined:

The Notices of Sale of appellant's foreclosed properties were published on March 28, April 11 and April 12, 1969 issues of the newspaper "Daily Record" (Amended Record on Appeal, p. 108). The date March 28, 1969 falls on a Friday while the dates April 11 and 12, 1969 are on a Friday and Saturday, respectively. Section 3 of Act No. 3135 requires that the notice of auction sale shall be "published once a week for at least three consecutive weeks". Evidently, defendant-appellee bank failed to comply with this legal requirement. The Supreme Court has held that:

"The rule is that statutory provisions governing publication of notice of mortgage foreclosure sales must be strictly complied with, and that even slight deviations therefrom will invalidate the notice and render the sale at least voidable (*Jalandoni vs. Ledesma*, 64 Phil. 1058, G.R. No. 42589, August 31, 1937 and October 29, 1937). Interpreting Sec. 457 of the Code of Civil Procedure (reproduced in Sec. 18(c) of Rule 39, Rules of Court and in Sec. 3 of Act No. 3135) in *Campomanes vs. Bartolome and German & Co.* (38 Phil. 808, G.R. No. 1309, October 18, 1918), this Court held that if a sheriff sells without the notice prescribed by the Code of Civil Procedure induced thereto by the judgment creditor, and the purchaser at the sale is the judgment creditor, the sale is absolutely void and no title passes. This is regarded as the settled doctrine in this jurisdiction whatever the rule may be elsewhere (*Borja vs. Addison*, 14 Phil. 895, G.R. No. 18010, June 21, 1922).

x x x. It has been held that failure to advertise a mortgage foreclosure sale in compliance with statutory requirements constitutes a jurisdictional defect invalidating the sale and that a substantial error or omission in a notice of sale will render the notice insufficient and vitiate the sale (59 C.J.S. 1314)." (*Tambunting vs. Court of Appeals*, L-48278, November 8, 1988; 167 SCRA 16, 23-24).

In view of the admission of defendant-appellee in its pleading showing that there was no compliance of the notice prescribed in Section 3 of Act No. 3135, as amended by Act 4118, with respect to the notice of sale of the foreclosed real properties in this case, we have no choice but to declare the auction sale as absolutely void in view of the fact that the highest bidder and purchaser in said auction sale was defendant-appellee bank. Consequently, the Certificate of Sale, the Final Deed of Sale and Affidavit of Consolidation are likewise of no legal effect. (pp. 24-25, Rollo)

Before we focus our attention on the subject of whether or not there was valid compliance in regard to the required publication, we shall briefly discuss the other observations of respondent court vis-a-vis herein private respondent's ascriptions raised with the appellate court when his suit for reconveyance was dismissed by the court of origin even as private respondent does not impugn the remarks of respondent court along this line.

Although respondent court acknowledged that there was an ambiguity on the date of execution of the third promissory note (June 30, 1961) and the date of maturity thereof (October 28, 1958), it was nonetheless established that the bank introduced sufficient proof to show that the discrepancy was a mere clerical error pursuant to Section 7, Rule 130 of the Rules of Court. Anent the second disputation aired by private respondent, the appellate court observed that inasmuch as the original as well as the subsequent mortgage were foreclosed only after private respondent's default, the procedure pursued by herein petitioner in foreclosing the collaterals was thus appropriate albeit the petition therefor contained only a copy of the original mortgage.

It was only on the aspect of publication of the notices of sale under Act No. 3135, as amended, and attorney's fees where herein private respondent scored points which culminated in the reversal of the trial court's decision. Respondent court was of the impression that herein petitioner failed to comply with the legal requirement and the sale effected thereafter must be adjudged invalid following the ruling of this Court in *Tambunting vs. Court of Appeals* (167 SCRA 16 [1988]); p. 8, Decision, p. 24, Rollo). In view of petitioner's so-called indifference to the rules set forth under Act No. 3135, as amended, respondent court expressly authorized private respondent to

recover attorney's fees because he was compelled to incur expenses to protect his interest.

Immediately upon the submission of a supplemental petition, the spouses Conrado and Marina De Vera filed a petition in intervention, claiming that the two parcels of land involved herein were sold to them on June 4, 1970 by petitioner for which transfer certificates of title were issued in their favor (p. 40, Rollo). On the other hand, private respondent pressed the idea that the alleged intervenors have no more interest in the disputed lots in view of the sale effected by them to Teresa Castillo, Aquilino and Antonio dela Cruz in 1990 (pp. 105-106, Rollo).

On March 9, 1992, the Court resolved to give due course to the petition and required the parties to submit their respective memoranda (p. 110, Rollo).

Now, in support of the theory on adherence to the conditions spelled in the preliminary portion of this discourse, the pronouncement of this Court in *Bonnevie vs. Court of Appeals* (125 SCRA 122 [1983]; p. 135, Rollo) is sought to be utilized to press the point that the notice need not be published for three full weeks. According to petitioner, there is no breach of the proviso since after the first publication on March 28, 1969, the second notice was published on April 11, 1969 (the last day of the second week), while the third publication on April 12, 1969 was announced on the first day of the third week. Petitioner thus concludes that there was no violation from the mere happenstance that the third publication was made only a day after the second publication since it is enough that the second publication be made on any day within the second week, and the third publication, on any day within the third week. Moreover, in its bid to rectify its admission in *judicio*, petitioner asseverates that said admission alluded to refers only to the dates of publications, not that there was non-compliance with the publication requirement.

Private respondent, on the other hand, views the legal question from a different perspective. He believes that the period between each publication must never be less than seven consecutive days (p. 4, Memorandum; p. 124, Rollo)

We are not convinced by petitioner's submissions because the disquisition in support thereof rests on the erroneous impression that the day on which the first publication was made, or on March 28, 1969, should be excluded pursuant to the third paragraph of Article 13 of the New Civil Code.

It must be conceded that Article 13 is completely silent as to the definition of what is a "week". In *Concepcion vs. Zanduet*a (36 O.G. 3139 [1938]; *Moreno*, Philippine Law Dictionary, Second Ed., 1972, p. 660), this term was interpreted to mean as a period of time consisting of seven consecutive days - a definition which dovetails with the ruling in *E.M. Derby and Co. vs. City of Modesto, et al.* (38 Pac. Rep. 900 [1984]; 1 Paras, Civil Code of the Philippines Annotated, Twelfth Ed., 1989, p. 88; 1 Tolentino, Commentaries and Jurisprudence on the Civil Code, 1990, p. 46). Following the interpretation in *Derby* as to the publication of an ordinance for "at least two weeks" in some newspaper that:

. . . here there is no date or event suggesting the exclusion of the first day's publication from the computation, and the cases above cited take this case out of the rule stated in Section 12, Code Civ. Proc. which excludes the first day and includes the last;

the publication effected on April 11, 1969 cannot be construed as sufficient advertisement for the second week because the period for the first week should be reckoned from March 28, 1969 until April 3, 1969 while the second week should be counted from April 4, 1969 until April 10, 1969. It is clear that the announcement on April 11, 1969 was both theoretically and physically accomplished during the first day of the third week and cannot thus be equated with compliance in law. Indeed, where the word is used simply as a measure of duration of time and without reference to the calendar, it means a period of seven consecutive days without regard to the day of the week on which it begins (1 Tolentino, *supra* at p. 467 citing *Derby*).

Certainly, it would have been absurd to exclude March 28, 1969 as reckoning point, in line with the third paragraph of Article 13 of the New Civil Code, for the purpose of counting the first week of publication as to make the last day thereof fall on April 4, 1969 because this will have the effect of extending the first week by another day. This incongruous repercussion could not have been the unwritten intention of the lawmakers when Act No. 3135 was enacted. Verily, inclusion of the first day of publication is in keeping with the computation in *Bonnevie vs. Court of Appeals* (125 SCRA 122 [1983]) where this Court had occasion to pronounce, through Justice Guerrero, that the publication of notice on June 30, July 7 and July 14, 1968 satisfied the publication requirement under Act No. 3135. Respondent court cannot, therefore, be faulted for holding that there was no compliance with the strict requirements of publication independently of the so-called admission in *judicio*.

WHEREFORE, the petitions for certiorari and intervention are hereby dismissed and the decision of the Court of Appeals dated April 17, 1991 is hereby affirmed in toto.

SO ORDERED.

Feliciano, (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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