

[CV No. 88634, January 31, 2008]

**JOSE ILETO, PLAINTIFF-APPELLANT, VS. RIZAL COMMERCIAL
BANKING CORPORATION, DEFENDANT-APPELLEE.**

Court of Appeals

Plaintiff appeals from the Order^[1] dated June 26, 2006 of the Regional Court, Branch 22 of the City of Malolos, Bulacan in Civil Case No. 760-M-2004 for Annulment of Title, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, the Motion to Dismiss filed by the defendant Rizal Commercial Banking.

Corporation is hereby GRANTED. This case is hereby DISMISSED for failure of the plaintiff's complaint to state a cause of action.

SO ORDERED."

The facts:

On September 11, 1996, appellant obtained a loan from the appellee in the amount of P3,000,000.00^[2] secured by a real estate mortgage^[3] over appellant's house and lot covered by TCT No. T-93642 with an area of 346 square meters situated at Baliuag, Bulacan. Under the Promissory Note's Schedule of Payments, the amount of P3,000,000.00 shall be payable in 15 years or -

"180 successive monthly installments starting on October 20, 1996 and payable every 20th day of the month as follows:

- 1) Six (6) level monthly installments of P46,170.13;
- 2) Installments thereafter shall be computed and negotiable periodically based on loan agreement."^{*}

Appellant also agreed to pay a penalty interest of 36% per annum on the amount due and unpaid in case of default.^[4] Before the maturity of the first loan, appellant borrowed an additional P420,000.00 from the appellee secured by the same real estate mortgage.^[5]

On December 1, 2004, appellant filed the instant Complaint claiming that he had been faithful in the payment of monthly amortizations for a continuous period of one year until appellee, without notice, increased by almost 40% the original stipulated interest on the loan; that he opposed the imposition of the increased interest but the appellee ignored his opposition; that when he tendered the corresponding amortizations applying the original rate of interest, appellee refused to accept the same causing his monthly amortizations to accumulate and the subsequent foreclosure of his property. Appellant also claimed that there were irregularities attendant to the conduct of the foreclosure sale, to wit: 1) lack of notice of sale to

the mortgagor, 2) absence of an affidavit of the sheriff attesting to the publication requirement of the foreclosure sale, and 3) non-posting of the notice of sale in the barangay where the mortgaged property is located; that the mortgaged property with a combined assessed value^[6] of P68,590.00 was sold at public auction for a price exceedingly higher than the true obligation of the appellant; and that title to the mortgaged property was consolidated in appellee's name.

On March 11, 2005, appellee bank filed a Motion to Dismiss on the ground of failure to state a cause of action alleging that personal notice to the mortgagor, the affidavit of the sheriff on compliance with the publication requirement, and the posting of the notice in the barangay where the property is situated are not required under Act No. 3135^[7]. Appellee attached the Affidavit of Publication executed by the Publisher/Editor of Sun Star Mabuhay Jose L. Pavia certifying that the Notice of Sheriff's Sale was published in Sun Star Mabuhay on September 27, October 4 and 11, 1998. The Notice of Sheriff's Sale^[8] stated that appellant's indebtedness amounted to P4,132,091.04 as of April 15, 1998; and that the public auction would take place on October 29, 1998 at 10:00 a.m. in front of the Office of the Ex-Officio Sheriff of Bulacan.

Appellant filed an Opposition to the Motion to Dismiss^[9] dated June 23, 2005 maintaining that his Complaint stated a cause of action as his property right was violated by the wrongful act of the defendant in foreclosing his property for an amount exceedingly higher than that stipulated in the contract; that the foreclosure conducted by the sheriff was not valid; and that there are facts alleged in the Complaint requiring trial on the merits.

On the June 26, 2006, the trial court rendered the appealed Order dismissing the instant Complaint for failure to state a cause of action. The trial court ratiocinated that under Act 3135, personal notice to the mortgagor, the affidavit of the sheriff and the posting of the notice of sale in the barangay are not requirements of a valid foreclosure.^[10]

On June 21, 2006, appellant filed a Motion for Reconsideration^[11] in effect modifying his cause of action by stating that appellee proceeded with the foreclosure of the real estate mortgage without furnishing him a demand letter that his loan was due and demandable; and that no notice of sale was posted in the locality where the mortgaged property is located.

On November 16, 2006, the trial court issued an Order denying appellant's Motion for Reconsideration. The trial court held that appellant's allegation that he was not furnished a demand letter could not be passed upon as the same was not alleged in his Complaint; and that in determining the existence of a cause of action, only the allegations in the Complaint must be considered.^[12]

Hence, this appeal^[13] with the following assignment of errors:

I.

THE TRIAL COURT ERRED IN FINDING THAT THE COMPLAINT