

SECOND DIVISION

[G.R. No. 179756, October 02, 2009]

**RIZAL COMMERCIAL BANKING CORPORATION, PETITIONER, VS.
ROYAL CARGO CORPORATION, RESPONDENT.**

DECISION

CARPIO MORALES, J.:

Terrymanila, Inc.^[1] (Terrymanila) filed a petition for voluntary insolvency with the Regional Trial Court (RTC) of Bataan on February 13, 1991.^[2] One of its creditors was Rizal Commercial Banking Corporation (petitioner) with which it had an obligation of P3 Million that was secured by a *chattel* mortgage executed on February 16, 1989. The chattel mortgage was duly recorded in the notarial register of Amado Castano, a notary public for and in the Province of Bataan.^[3]

Royal Cargo Corporation (respondent), another creditor of Terrymanila, filed an action before the RTC of Manila for collection of sum of money and preliminarily attached "some" of Terrymanila's personal properties on March 5, 1991 to secure the satisfaction of a judgment award of P296,662.16, exclusive of interests and attorney's fees.^[4]

On April 12, 1991, the Bataan RTC declared Terrymanila insolvent.

On June 11, 1991,^[5] the Manila RTC, by Decision of even date, rendered judgment in the collection case in favor of respondent.

In the meantime, petitioner sought in the insolvency proceedings at the Bataan RTC permission to extrajudicially foreclose the chattel mortgage which was granted by Order of February 3, 1992.^[6] It appears that respondent, together with its employees' union, moved to have this Order reconsidered but the motion was denied by Order of March 20, 1992 Order.^[7]

The provincial sheriff of Bataan thereupon scheduled on June 16, 1992 the public auction sale of the mortgaged personal properties at the Municipal Building of Mariveles, Bataan. At the auction sale, petitioner, the sole bidder of the properties, purchased them for P1.5 Million. Eventually, petitioner sold the properties to Domingo Bondoc and Victoriano See.^[8]

Respondent later filed on July 30, 1992 a petition before the RTC of Manila, docketed as Civil Case No. 92-62106, against the Provincial Sheriff of the RTC Bataan and petitioner, for annulment of the auction sale (annulment of sale case). Apart from questioning the inclusion in the auction sale^[9] of some of the properties which it had attached, respondent questioned the failure to duly notify it of the sale at least 10 days before the sale, citing Section 14 of Act No. 1508 or the *Chattel*

Mortgage Law which reads:

Sec. 14. The mortgagee, his executor, administrator or assign, may, after thirty days, from the time of condition broken, cause the mortgaged property, or any part thereof, to be sold at public auction by a public officer at a public place in the municipality where the mortgagor resides, or where the property is situated, provided at least ten days notice of the time, place, and purpose of such sale has been posted at two or more public places in such municipality, and **the mortgagee, his executor, administrator or assignee shall notify the mortgagor or person holding under him and the persons holding subsequent mortgages of the time and place of sale, either by notice in writing directed to him or left at his abode, if within the municipality, or sent by mail if he does not reside in such municipality, at least ten days previous to the date.** (Emphasis and underscoring supplied),

it claiming that its counsel received a notice only on the day of the sale.^[10]

Petitioner, alleging that the annulment of sale case filed by respondent stated no cause of action, filed on December 3, 1992 a Motion to Dismiss^[11] which was, however, denied by Branch 16 of the Manila RTC.^[12]

Petitioner appealed the denial of the Motion to Dismiss via *certiorari* to the Court of Appeals, docketed as **CA-G.R. SP No. 31125**. The appellate court dismissed the petition, by Decision of February 21, 1994, it holding that respondent's petition for annulment "prima facie states a sufficient cause of action and that the [trial court] in denying [herein petitioner RCBC's] motion to dismiss, had acted advisedly and well within its powers and authority."^[13]

Petitioner thereupon filed before the Manila RTC its Answer *Ex Abundante Cautelam*^[14] in the annulment of sale case in which it lodged a Compulsory Counterclaim by seeking P1 Million for moral damages, P500,000 for exemplary damages, and P250,000 for attorney's fees. It thereafter elevated the case to this Court via petition for review on *certiorari*, docketed as **G.R. 115662**. This Court by minute Resolution of November 7, 1994,^[15] denied the petition for failure to show that a reversible error was committed by the appellate court.^[16]

Trial on the merits of the annulment of sale case thereupon ensued. By Decision^[17] of October 15, 1997, Branch 16 of the Manila RTC rendered judgment in favor of respondent, disposing as follows:

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered:

1. ORDERING . . . RCBC to pay plaintiff [herein respondent Royal Cargo] the amount of P296,662.16 and P8,000.00 as reasonable attorney's fees.

2. No pronouncement as to costs.

3. DISMISSING the petition as to respondents Provincial Sheriff of Balanga, Bataan RTC;

SO ORDERED.

Both parties appealed to the Court of Appeals which, by Decision^[18] of April 17, 2007, denied herein petitioner's appeal and partly granted herein respondent's by increasing to P50,000 the attorney's fees awarded to it and additionally awarding it exemplary damages and imposing interest on the principal amount payable to it. Thus it disposed:

WHEREFORE, the foregoing considered, the appeal instituted by appellant RCBC is hereby DENIED for lack of merit while the appeal of appellant Royal Cargo is PARTLY GRANTED in that the amount of **attorney's fees awarded by the RTC is increased to P50,000.00.**

In addition, RCBC is ordered to **pay Royal Cargo the amount of P100,000.00 as exemplary damages**. The principal amount of P296,662.18 [*sic*] to be paid by RCBC to Royal Cargo shall likewise earn **12% interest per annum** from the time the petition was filed in the court a quo until fully paid. The rest of the decision is AFFIRMED.

SO ORDERED. (Emphasis and underscoring supplied)

In partly granting respondent's appeal from the Decision of Br. 16 of RTC Manila, the appellate court ratiocinated that respondent had a right to be "timely informed" of the foreclosure sale.

RCBC's citations [*sic*] of numerous rulings on the matter more than supports the fact that as mortgagee, it had preferential right over the chattels subject of the foreclosure sale. This however is not at issue in this case. What is being contested is the **right** of Royal Cargo to be **timely informed** of the foreclosure sale as it too had interests over the mortgagee Terrymanila, Inc.'s assets. We note that this matter had **already been passed** upon by this Court on February 21, 1994 in CA-G.R. SP No. 31125 as well as by the Supreme Court on November 7, 1994 in G.R. No. ^[1]15662. RCBC, by arguing about its preferential right as mortgagee in the instant appeal merely reiterates what had **already been considered and ruled upon** in earlier proceedings.

X X X X

Moreover, Section 14 of the Chattel Mortgage Law pertaining to the procedure in the foreclosure of chattel mortgages provides, to wit:

X X X X

The above-quoted provision clearly requires that the mortgagee should notify in writing the mortgagor or person holding under him of the time and place of the sale by personal delivery of the notice. Thus, RCBC's failure to comply with this requirement warranted a ruling against it by the RTC. (Italics in the original; emphasis partly in the original; underscoring supplied)

Its motion for reconsideration having been denied by the appellate court,^[19] petitioner lodged the present petition for review which raises the following issues:

I

WHETHER OR NOT RESPONDENT SHOULD HAVE BEEN GIVEN A TEN(10)-DAY PRIOR NOTICE OF THE JUNE 16, 1992 FORECLOSURE SALE

II

WHETHER OR NOT THE TRIAL COURT AND THE COURT OF APPEALS GRAVELY ERRED IN DECLARING PETITIONER GUILTY OF CONSTRUCTIVE FRAUD IN FAILING TO PROVIDE RESPONDENT A TEN (10)-DAY PRIOR NOTICE OF THE FORECLOSURE SALE.

III

WHETHER OR NOT THE PETITIONER WAS CORRECTLY HELD LIABLE TO PAY RESPONDENT P296,662.^[16] PLUS INTEREST THEREON, EXEMPLARY DAMAGES AND ATTORNEY'S FEES.

IV

WHETHER OR NOT PETITIONER IS ENTITLED TO AN AWARD OF ATTORNEY'S FEES.^[20] (Underscoring supplied)

Petitioner faults the appellate court in applying *res judicata* by holding that respondent's entitlement to notice of the auction sale had already been settled in its Decision in CA G.R. SP No. 31125 and in this Court's Decision in G.R. No. 115662. For, so it contends, the decisions in these cases dealt on *interlocutory* issues, viz: the issue of whether respondent's petition for annulment of the sale stated a cause of action, and the issue of whether petitioner's motion to dismiss was properly denied.^[21]

Arguing against respondent's position that it was entitled to notice of the auction sale, petitioner cites the *Chattel Mortgage Law* which enumerates who are entitled to be notified under Section 14 thereof. It posits that "[h]ad the law intended to include in said Section an attaching creditor or a judgment creditor [like herein respondent], it could have so specifically stated therein, since in the preceding section, Section 13, it already mentioned that a subsequent attaching creditor may redeem."^[22]

Petitioner goes on to fault the appellate court in echoing its ruling in CA-G.R. SP No. 31125 that Sections 13^[23] and 14 of the *Chattel Mortgage Law* should be read in tandem since the right given to the attaching creditor under Section 13 "would not serve its purpose if we were to exclude the subsequent attaching creditor from those who under Section 14 need to be notified of the foreclosure sale ten days before it is held."^[24]

Petitioner likewise posits that Section 13 permits a subsequent attaching creditor to "redeem" the mortgage only before the holding of the auction sale, drawing attention to *Paray v. Rodriguez*^[25] which instructs that no right of redemption exists over *personal* property as the *Chattel Mortgage Law* is silent thereon.^[26]

Even assuming *arguendo*, petitioner contends, that there exists an obligation to furnish respondent a notice of the auction sale 10 days prior thereto, "respondent's judgment award of P296,662.16 with interest thereon at the legal rate from the date of filing of the [c]omplaint and P10,000.00 as reasonable attorney's fees is very much less than the P1.5 [m]illion bid of petitioner..^[27]

As for the issue of constructive fraud-basis of the award of damages to respondent, petitioner maintains that both the trial and appellate courts erred in concluding that it (petitioner) was the one which sent the notice of sheriff's sale to, which was received on the day of the sale by, the counsel for respondent for, so it contends, it had absolutely no participation in the preparation and sending of such notice.^[28]

In its Comment,^[29] respondent reiterates that the respective decisions of the appellate court and this Court in CA G.R. SP No. 31125 and G.R. No. 115662 are *conclusive* between the parties, hence, "the right of [respondent] to a [ten-day] notice has a binding effect and must be adopted in any other controversy between the same parties in which the very same question is raised."^[30]

And respondent maintains that the obligation to notify the mortgagor or person holding under him and the persons holding subsequent mortgages falls upon petitioner as the mortgagee.

The petition is MERITORIOUS.

The respective decisions of the appellate court in CA G.R. SP No. 31125 and this Court in G.R. No. 115662 did not conclusively settle the issue on the need to give a 10-day notice to respondent of the holding of the public auction sale of the chattels.

The elements of *res judicata* are: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of parties, subject matter, and causes of action.^[31]

Res judicata has two concepts: (1) bar by prior judgment as enunciated in Rule 39, Section 47 (b) of the Rules of Civil Procedure; and (2) conclusiveness of judgment in Rule 39, Section 47 (c).^[32]