

SPECIAL TWELFTH DIVISION

[CA-G.R. CV. No. 99456, February 13, 2014]

**PHILIPPINE SAVINGS BANK, PETITIONER-APPELLEE, V.
SPOUSES EDUARDO ERNACIO AND VILDA ERNACIO,
OPPOSITORS-APPELLANTS.**

D E C I S I O N

ELBINIAS, J.:

Questioned in this Appeal^[1] under Rule 41 of the Rules of Court is the Order^[2] dated December 21, 2011 of the Regional Trial Court of Biñan City, Laguna, Branch 25 ("lower court" for brevity) in LRC Case No. B-4993 for the "ISSUANCE OF WRIT OF POSSESSION UNDER SECTION 7 OF ACT NO. 3135 AS AMENDED, OVER THE PROPERTY/IES COVERED BY TRANSFER CERTIFICATE OF TITLE NO/S. T-658106 OF THE REGISTRY OF DEEDS OF CALAMBA CITY IN THE NAME OF SPS. EDUARDO ERNACIO AND VILDA ERNACIO."^[3] The Appeal also questions the lower court's Order^[4] dated May 23, 2012, which denied oppositors-appellants' eventual Motion for Reconsideration.^[5]

The antecedent facts are as follows:

On January 19, 2010, oppositors-appellants Spouses Eduardo Ernacio and Vilda Ernacio ("oppositors-appellants" for brevity) obtained a loan from petitioner-appellee Philippine Savings Bank ("petitioner-appellee" for brevity) evidenced by a Promissory Note.^[6] To secure the payment of the loan, oppositors-appellants executed a Real Estate Mortgage^[7] ("REM" for brevity) dated January 19, 2010, mortgaging to petitioner-appellee their property covered by Transfer Certificate of Title No. T-658106^[8] ("subject property" for brevity) located at Calamba City, Laguna.

Oppositores-appellants failed^[9] to pay their loan in accordance with the provisions of the Promissory Note^[10] and the REM,^[11] despite petitioner-appellee's Demand Letter^[12] dated August 9, 2011 for oppositors-appellants to pay.^[13]

Thus, on September 3, 2010, petitioner-appellee filed before the Honorable Executive Judge of the Regional Trial Court of Biñan, Laguna, thru the Clerk of Court and Ex Officio Sheriff, an "Application for Extrajudicial Foreclosure of Real Estate Mortgage under Act No. 3135, as Amended"^[14], against oppositors-appellants' subject property.

Petitioner-appellee was declared as the highest bidder in the auction sale. Afterwards, a Certificate of Sale^[15] was issued on November 5, 2010 in favor of petitioner-appellee, and was registered with the Register of Deeds of Calamba City on November 11, 2010.^[16]

On September 12, 2011, petitioner-appellee filed before the lower court an ex parte Petition for the "ISSUANCE OF A WRIT OF POSSESSION UNDER SECTION 7 OF ACT No. 3135, AS AMENDED OVER THE PROPERTY/IES COVERED BY Transfer Certificate of Title No/s. T-658106 OF THE REGISTRY OF DEEDS OF CALAMBA CITY IN THE NAME OF SPS. EDUARDO ERNACIO AND VILDA ERNACIO"^[17] ("Petition for the Issuance of a Writ of Possession" for brevity).

Oppositors-appellants failed to redeem the subject property within one (1) year from the registration of the Certificate of Sale on November 11, 2010.^[18]

On December 21, 2011, the lower court issued its first assailed Order,^[19] which granted petitioner-appellee's Petition for the Issuance of a Writ of Possession. The dispositive portion of the Order decreed:

"WHEREFORE, in view of the foregoing, let a writ of possession issue over the subject property located at the Municipality of Sta. Rosa, Laguna covered by Transfer Certificates (sic) of Title No. **T-658106** in favor of the petitioner.

Let copy of this order be furnished by registered mail with return card to Atty. Gilbert Gordove and petitioner.

SO ORDERED."^[20] (*Emphasis was made in the original*)

After oppositors-appellants' Motion for Reconsideration^[21] was denied by the lower court in its other assailed Order^[22] dated May 23, 2012, oppositors-appellants filed the Appeal^[23] at bench, praying that:

"Na, dahil sa mga nabanggit at paliwanag sa itaas ay mapitagan ko pong ipinapanalangin ang mga sumusunod sa Kagalang galang na DUMIDINIG sa kaso naming ito na:

1. Balewalain ang inilunsad na foreclosure proceedings at maging and iniisyung (*sic*) Certificate of Sale sa PHILIPPINES (*sic*) SAVINGS BANK INC..
2. Balewalain at/o bawiin ang iniisyung WRIT OF POSSESSION ni Kagalang galang Judge TEODORO N. SOLIS noong May 23, 2012 at maglabas ng bagong kautusan na nangsasabing (*sic*) illegal ang pagkaka-foreclose ng nakasanla naming titulo at iba pa naming ari-arian;
3. I-utos ng Kagalang galang na DUMIDINIG na ang dapat na babayaran lamang namin ay ang halagang bago ang ipinadalang Demand Letter/Notice of Foreclosure noong August 04, 2010 at kung bakit wala kaming mailagay na halaga dito ay dahil sa ayaw magbigay ng hinihingi naming mga dokumento ang PS BANK.
4. Panalangin ko din po ang iba pang disisyon na sa tingin ng Kagalang-galang na DUMIDINIG ay makakabuti sa amin."^[24]

The Appeal raised the following issues:

"A. HINDI DAPAT NA IPINORCLOSED ANG NAKASANLA KONG TITULO NA NASA TRANSFER CERTIFICATE OF TITLE NO. T-658106 DAHIL

NAKAPAGBAYAD NA KAMI

B. WALANG DUE PROCESS NA IBINIGAY SA AMIN ANG PHILIPPINE SAVINGS BANK INC. AT NILABAG NILA ANG SECTION 1, ARTICLE III BILL OF RIGHTS NA NAKASAAD SA SALIGANG BATAS”^[25]

Despite the failure of petitioner-appellee to file its Appellee's Brief, it is nevertheless Our “primary duty to render or dispense justice”^[26] in this case in accordance with the facts and the law.

At the outset, the Appeal is dismissible, because of oppositors-appellants' failure to include a Subject Index and Assignment of Errors in their Appellants' Brief. Such Subject Index and Assignment of Errors are required under Section 13 (a and b), Rule 44 of the Rules of Court, to wit:

“**SEC. 13. Contents of appellant's brief.**— The appellant's brief shall contain, the order herein indicated, the following:

(a) A subject index of the matter in the brief with a digest of the arguments and page references, and a table of cases alphabetically arranged, textbooks and statutes cited with references to the pages where they are cited;

(b) An assignment of errors intended to be urged, which errors shall be separately, distinctly and concisely stated without repetition and numbered consecutively;” (*Emphasis was made in the original*)

The absence of such Subject Index and Assignment of Errors is fatal to the Appeal at bench, considering that such absence is one of the grounds for the dismissal of an Appeal pursuant to Section 1 (f), Rule 50 of the Rules of Court, to wit:

“**SEC. 1. Grounds for dismissal of Appeal.**— An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

(f) **Absence of specific assignment of errors in the appellant's brief, or of page references to the records as required in section 13, paragraphs (a), (c), (d) and (f) of Rule 44;**” (*Emphasis Supplied*)

That oppositors-appellants' failure to include a Subject Index and Assignment of Errors in their Appellants' Brief warrants the dismissal of their Appeal was similarly declared by the Supreme Court in ***Adelia C. Mendoza and as Attorney-in-Fact of Alice Malleta vs. United Coconut Planters Bank, Inc., G.R. No. 165575, February 2, 2011***:

“In this case, **the Appellants’ Brief of petitioners did not have a subject index. The importance of a subject index should not be underestimated. De Liano v. Court of Appeals declared that the subject index functions like a table of contents, facilitating the review of appeals by providing ready reference.** It held that:

[t]he first requirement of an appellant’s brief is a subject index. The index is intended to facilitate the review

of appeals by providing ready reference, functioning much like a table of contents. xxx **The subject index makes readily available at one's fingertips the subject of the contents of the brief so that the need to thumb through the brief page after page to locate a party's arguments, or a particular citation, or whatever else needs to be found and considered, is obviated.**

Moreover, **the Appellants' Brief had no assignment of errors, but petitioners insist that it is embodied in the 'Issues' of the brief. The requirement under Section 13, Rule 44 of the 1997 Rules of Civil Procedure for an 'assignment of errors' in paragraph (b) thereof is different from a 'statement of the issues of fact or law' in paragraph (e) thereof.** The statement of issues is not to be confused with the assignment of errors, since they are not one and the same; otherwise, the rules would not require a separate statement for each. **An assignment of errors is an enumeration by the appellant of the errors alleged to have been committed by the trial court for which he/she seeks to obtain a reversal of the judgment, while the statement of issues puts forth the questions of fact or law to be resolved by the appellate court.**

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Some may argue that adherence to these formal requirements serves but a meaningless purpose, that these may be ignored with little risk in the smug certainty that liberality in the application of procedural rules can always be relied upon to remedy the infirmities. This misses the point. We are not martinets; in appropriate instances, we are prepared to listen to reason, and to give relief as the circumstances may warrant. However, **when the error relates to something so elementary as to be inexcusable, our discretion becomes nothing more than an exercise in frustration. It comes as an unpleasant shock to us that the contents of an appellant's brief should still be raised as an issue now. There is nothing arcane or novel about the provisions of Section 13, Rule 44. The rule governing the contents of appellants' briefs has existed since the old Rules of Court, which took effect on July 1, 1940, as well as the Revised Rules of Court, which took effect on January 1, 1964, until they were superseded by the present 1997 Rules of Civil Procedure. The provisions were substantially preserved, with few revisions.**

In fine, **the Court upholds the Resolutions of the Court of Appeals dismissing the appeal of petitioners on the ground that their Appellants' Brief does not comply with the requirements provided in Section 13, Rule 44 of the 1997 Rules of Civil Procedure, as the dismissal is supported by Section 1 (f), Rule 50 of the 1997 Rules of Civil Procedure and jurisprudence."** (*Emphasis Supplied*)

Even assuming that oppositors-appellants had substantially complied with the requirements of an Appeal, still, oppositors-appellants' allegations on the merits are unavailing.

Contrary to oppositors-appellants' allegations in their *assigned issue A.*, the lower court properly issued the Writ of Possession in favor of petitioner-appellee.

Oppositors-appellants had argued that:

"19.1. 'HINDI I-RERELEASE ANG INYONG INUUTANG KAPAG HINDI MUNA KAYO MAGBABAYAD NG INYONG BUWANANG HULOG'. Ito ang malinaw na itinakdang kondisyon ng PS BANK sa amin kaya kung titignan, dahil serye ang ginawang pagrerelease ng PS BANK sa inutang kong Php 2,170,000.00, imposible ang sinabi nito na hindi kami nagbabayad ng aming buwanang hulog dahil kakabit ng seryeng pagrerelease ng inutang kong Php 2,170,000.00 ang sinasabi nilang hindi nila ibibigay and susunod na release ng aking loan kung hindi muna kami magbabayad ng aming buwanang hulog. Bayad ako mula buwan ng February hanggang May 2010 at makikita ito sa ginawang serye ng pagrerelease na nagsimula ng buwan ng January 22, 2010 (Php 141,070), February 19, 2010 (Php 602,165.89), March 26, 2010 (Php 604,104.74) at May 07, 2010 (Php 600,971.43) xxx. Dahil noong May 07, 2010 ang huling release ng aming loan (Php 600,907.43) ay nakapagbayad pa ako para sa buwan ng June 2010. Buwan ng July ay hindi kami nakapagbayad dahil sa may kagyat at importante kaming pinagkagastusan ngunit ikalawang linggo ng Agosto ay pumunta kami sa bangko upang muling magbayad ngunit sinabihan kami ng PS BANK na foreclosed na ang aming pagkaka-utang at sa abogado na lang kami makipag-usap.

20. Nagbabayad kami at makikita ang patunay nito sa itaas! Hindi kami nakabayad ng buwan ng July 2010 dahil sa may importante kaming pinagkagastusan ng buwang ito. Ang pagpunta namin ng ikalawang linggo ng Agosto 2010 para magbayad ay pagpapakita na nais naming magpatuloy sa ginagawa naming pagbabayad. Ang muli naming pagbalik ng ikalawang hati ng buwan ng [A]gosto ay may intensiyon at layuning ilinaw at igiit sa bangko na nakakabayad (*sic*) kami... tanggapin ang ibinabayad namin para sa buwan ng July 2010 at ibigay sa amin ang resibo ng mga binayaran namin mula February hanggang June 2010 at iba pang dokumento na kaugnay ng aming utang, ang nakakalungkot... sa halip na tugunan ang legal, may batayan at makatarungan naming kahilingan, sinagot kami ng kausap naming taga PS BANK na dahil foreclosed na ito... ipinoproseso na ng legal para ilipat sa pangalan ng bangko ang aming isinanlang titulo.

20.1. Ginawa namin ang paglilinaw at paggiit na ito sa bangko upang maipakita sa kanila na mali ang ginawa nilang pagpo-foreclosed sa aming utang at nakasanlang titulo at maipakita rin sa bangko na hindi namin basta iiwanan ang aming legal na karapatan sa isinanla naming bahay at lupa at dahil illegal ang foreclosure na ginawa nila, dapat lamang na payagan nila na maipagpatuloy namin ang aming buwanang pagbabayad.