

THIRD DIVISION

[G.R. No. 193228, November 27, 2017]

BOSTON EQUITY RESOURCES, INC., AND WILLIAM HERNANDEZ, PETITIONERS, VS. EDGARDO D. DEL ROSARIO, RESPONDENT. CHRISTINA G. DEL ROSARIO, PETER DEL ROSARIO, PAUL DEL ROSARIO, IN THEIR PERSONAL CAPACITY AND AS REPRESENTATIVE OF THE ESTATE OF ROSIE GONZALES DEL ROSARIO, RESPONDENTS-IN-INTERVENTION.

DECISION

BERSAMIN, J.:

The two-bidder rule is not applicable during the public auction of the mortgaged assets foreclosed pursuant to Act No. 3135.^[1] But the mortgage itself and the extrajudicial foreclosure thereof should nonetheless be nullified for lack of the written consent to the mortgage of conjugal assets by the spouse of the mortgagor.

The Case

Petitioner Boston Equity Resources, Inc. (Boston Equity), the mortgagee who was also the highest bidder of the assets under mortgage, hereby seeks the review and reversal of the adverse decision promulgated on April 28, 2010,^[2] whereby the Court of Appeals (CA) annulled the real estate mortgage (REM), its amendment and the foreclosure proceedings taken pursuant to the REM.

Antecedents

The assailed decision of the CA recited the following factual and procedural antecedents, viz.:

Plaintiff-appellant Edgardo Del Rosario ... was married to herein plaintiff-intervenor-appellant Rosie Gonzales Del Rosario on March 9, 1968 and their marriage has been blessed with three children, herein plaintiffs-intervenors-appellants, Christina, Peter and Paul, all surnamed Del Rosario.

Defendant-appellee Boston Equity Resources, Inc., ...is a private corporation duly registered and operating under the laws of the Philippines with defendant-appellee William Hernandez as its president.

Defendant Mercedes Gatmaitan is impleaded in her capacity as Ex-Officio Sheriff of the Quezon City Regional Trial Court.

On April 12, 1999, Del Rosario and Boston entered into a Real Estate Mortgage whereby the former, representing himself as single, mortgaged six (6) parcels of land located at 300 Kanlaon St., Sta Mesa Heights, Quezon City to the latter for Seventeen Million Pesos (Php17,000,000.00) at an interest rate of 4 per centum (4%) monthly within a period of six (6) months. Said parcels of land registered under the name of Del Rosario has a total land area of four thousand five hundred thirty three and 60/100 (4,533.60) square meters and are covered by transfer certificates of title numbered as follows: RT-71666 (375141), RT-71665 (375139), RT-71668 (375142), RT-71669 (375140), RT-71667 (375138) and RT-72517 (129992). The fair market value of the said parcels of land is One Hundred Thirteen Million and Three Hundred Forty Five Thousand Pesos (Php113,345,000.00).

However, records indicated that only two certificates of title were attached. On May 3, 1968, the Register of Deeds of Quezon City issued TCT No. RT-72517 (129992) covering Six Hundred Thirty Seven Square Meters and Eighty Square Decimeters (637.8) to Edgardo del Rosario. Likewise, TCT No. RT-71665 (375139) was issued to Edgardo del Rosario on February 3, 1988. This title covered Five Hundred Forty Seven Square Meters and Ninety Square Decimeters (547.9).

Thereafter, additional loan obligations amounting to Fifteen Million Pesos (Php15,000,000.00) was obtained by Del Rosario. Thus, on September 8, 1999, the Real Estate Mortgage previously executed was amended to include the Fifteen Million Pesos additional loan and adopting therein all the terms and conditions stated in the Real Estate Mortgage.

On various dates, Del Rosario paid a total amount of Three Million One Hundred Seventy Eight Thousand Six Hundred Sixty Seven Pesos (Php3,178,667.00) represented by encashed Checks and Twenty Five Million Pesos (Php25,000,000.00) on December 8, 1999, as evidenced by the Official Receipt No. 14019 in favor of Boston to obtain a release from the Thirty Two Million Pesos (Php32,000,000.00) loan as stated in the Certification issued by Josephine Sha, Finance Manager of Boston.

On December 9, 1999, Boston issued a Cash Voucher to Del Rosario representing the excess payment by the latter of Seven Million Two Hundred Fifty Seven Thousand and Two Hundred Pesos (Php 7,257,200.00) on the Thirty Two Million Peso[s] loan.

On various dates in the year 2000, Del Rosario again obtained several loans totaling Thirty Four Million Four Hundred Thousand Pesos (Php 34,400,000.00) but because Boston made an advanced deduction of interest (Php 11,660,347.00), he was able to receive only Twenty Two Million Seven Hundred Thirty Nine Thousand and Six Hundred Fifty Three Pesos (Php22,739,653.00) from the said loan.

Thereafter, on February 21, 2001, Boston sent a Demand Letter to Del Rosario for the payment of Fifty Two Million and Nine Hundred Thousand Pesos (Php 52,900,000.00), claiming it to be the principal amount Del

Rosario owed to the former excluding penalties and other charges. In response to Boston's demand letter, Del Rosario sent a Letter dated March 8, 2001 asking Boston to furnish him an accurate and specific statement of account, so that he can properly settle his obligation as the amount alleged in the demand letter was not accurate since it included the commission of Nelia So.

Instead of heeding Del Rosario's requests for an accurate statement of account, on March 13, 2001, Boston sent another Demand Letter to Del Rosario this time seeking the payment for the amount of Fifty One Million Four Hundred Thousand Pesos (Php 51,400,000.00). Through a Letter dated May 31, 2001, Del Rosario asked for [an] additional time to settle his obligation.

Boston did not grant Del Rosario's request for time to settle his loan but proceeded to foreclose Del Rosario's properties by causing the publication of the Notice of Foreclosure in Maharlika Pilipinas on May 31, June 7 and June 14, 2001.

As a consequence, the Ex-Officio Sheriff of Quezon City sent a Notice of Extra-Judicial Sale of Real Property Under Act 3135 (As Amended) dated May 28, 2001 to Del Rosario saying that the parcels of land shall be sold at a public auction on June 27, 2001 in order to satisfy his Php 52.9 Million debt with Boston. In the said sale, Boston was declared the sole bidder for the properties in the amount of Seventy Five Million Pesos (Php 75,000,000.00).^[3]

As the offshoot of the foregoing antecedents, Edgardo brought his complaint for the declaration of the nullity of the extrajudicial foreclosure of the REM and the sheriffs sale on May 8, 2002 against Boston Equity in the Regional Trial Court in Quezon City (RTC). The case, docketed as Civil Case No. Q-02-46788, was initially assigned to Branch 78.^[4]

On May 14, 2002, the RTC granted Edgardo's prayer for the issuance of the temporary restraining order (TRO), and enjoined Boston Equity from consolidating title and from obtaining a writ of possession respecting the mortgaged properties.^[5]

On May 21, 2002, the late Rosie Gonzales Del Rosario (Rosie), the spouse of Edgardo, and their children, namely: Christina, Peter and Paul, all surnamed Del Rosario, filed in the RTC their motion to admit their complaint-in-intervention on the basis that they had a legal interest as the co-owners of the mortgaged properties by reason of the same forming part of the conjugal partnership of gains of Rosie and Edgardo. They joined the prayer of Edgardo for the declaration of the nullity of the promissory notes, the REM and its amendment, and the extrajudicial foreclosure of the REM and the ensuing sheriffs sale.^[6]

On August 27, 2007,^[7] the RTC dismissed Edgardo's complaint, disposing thusly:

WHEREFORE, in view of the foregoing, the instant Complaint for Declaration of Nullity of Extrajudicial Foreclosure & Sheriffs Sale is hereby DISMISSED for lack of merit. Accordingly, the Writ of Preliminary Injunction issued on June 19, 2002 is hereby lifted.

SO ORDERED.^[8]

Edgardo, Rosie and the Del Rosario children separately appealed to the CA, which ultimately overturned the RTC's ruling through the assailed decision of April 28, 2010, decreeing as follows:

WHEREFORE, premises considered, the instant appeal is hereby **GRANTED**. The Decision of RTC Branch 224 of Quezon City in Civil Case No. Q-02-46788 is **REVERSED AND SET ASIDE** and a new one entered declaring the nullity of the subject Real Estate Mortgage and its Amendment, and all the proceedings emanating therefrom.

SO ORDERED.^[9]

The CA opined that the REM, having involved conjugal properties, had required the written consent of Rosie for its validity; that the REM and its amendment were consequently null and void; that the extrajudicial foreclosure sale was further null and void for failure to comply with the procedure mandated by A.M. No. 99-10-05-0 (*Procedure in Extra-Judicial Foreclosure of Mortgage*) requiring at least two bidders during the public auction; and that Boston Equity could not validly consider Edgardo's loan account to be in default without first giving him a proper accounting.^[10]

With the CA denying their motion for reconsideration on August 6, 2010,^[11] the petitioners appeal.

Issues

The petitioners insist on the following errors:

I

THE COURT OF APPEALS ERRED IN RULING THAT THE MORTGAGE EXECUTED BY EDGARDO IS NULL AND VOID BECAUSE OF THE ALLEGED LACK OF CONSENT OF ROSIE, WIFE OF EDGARDO IN THE MORTGAGE CONTRACT AND ITS AMENDMENT.

II

THE COURT OF APPEALS ERRED IN HOLDING THAT THE EXTRAJUDICIAL FORECLOSURE SALE OF THE PROPERTIES MORTGAGED WAS NULL AND VOID FOR ITS FAILURE TO COMPLY WITH A.M. NO. 99-10-05-0 WHICH

ALLEGEDLY REQUIRES AT LEAST TWO OR MORE PARTICIPATING BIDDERS IN THE AUCTION SALE.

III

THE COURT OF APPEALS, WITH ALL DUE RESPECT, COMMITTED AN ERROR WHEN IT DECLARED THAT PLAINTIFF-APPELLANT IS ENTITLED TO A "PROPER ACCOUNTING" OF HIS OUTSTANDING OBLIGATION.^[12]

Ruling of the Court

The appeal, albeit meritorious on the non-applicability of the two-bidder rule and the efficacy of the publication of the public auction, should fail on the ground that the REM and its amendment were void for lack of the written consent to the mortgage of Rosie, the spouse.

I.

The CA erred in annulling the extrajudicial foreclosure sale for failure to have at least two bidders during the foreclosure sale

That only Boston Equity had participated in the bidding during the foreclosure sale did not constitute a defect that nullified or voided the foreclosure sale considering that the Court had already dispensed with the two-bidder rule for purposes of the foreclosure sale of private properties.^[13]

The extrajudicial foreclosure of a mortgage with the special power of attorney to sell the security being inserted in or attached to the deed of mortgage is governed by Act No. 3135, particularly the following provisions:

Sec. 3. Notice shall be given by posting notices of the sale 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 notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city.**

Sec. 4. The sale shall be made **at public auction, between the hours or nine in the morning and four in the afternoon;** and shall be under the direction of the sheriff of the province, the justice or auxiliary justice of the peace of the municipality in which such sale has to be made, or a notary public of said municipality, who shall be entitled to collect a fee of five pesos each day of actual work performed, in addition to his expenses.

Sec. 5. At any sale, the creditor, trustee, or other persons authorized to act for the creditor, may participate in the bidding and purchase under the same conditions as any other bidder, unless the contrary has been