

SECOND DIVISION

[G.R. No. 159615, February 09, 2011]

SPOUSES VICTOR ONG AND GRACE TIU ONG, PETITIONERS, VS. PREMIER DEVELOPMENT BANK, THE PROVINCIAL SHERIFF OF RIZAL GRACE S. BELVIS AND DEPUTY SHERIFF VICTOR S. STANA, RESPONDENTS.

DECISION.

MENDOZA, J.:

This is a petition for review on certiorari filed by the petitioners, spouses Victor and Grace Ong (*Spouses Ong*), seeking to set aside the March 31, 2003 Decision^[1] of the Court of Appeals (CA) which affirmed the decision^[2] of the Regional Trial Court Branch 267, Pasig City (RTC), dismissing the petitioners' complaint for annulment of extra-judicial foreclosure of real estate mortgage, and its August 13, 2003 Resolution denying the motion for reconsideration.^[3]

The Facts

Records reveal that Kenlene Laboratories, Inc. with Spouses Ong acting as Director and Treasurer, respectively, obtained a loan from Premier Development Bank (PDB) in the amount of P10,000,000.00. On September 27, 1990, Spouses Ong executed a promissory note obligating themselves to pay PDB on or before September 27, 1997 the amount of the loan with interest at 31% per annum with monthly installment of P292,658.08. The petitioners' loan application with the PDB was secured by a real estate mortgage over Spouses Ong's residential property in West Greenhills, San Juan, Metro Manila.

For failure of the Spouses Ong to pay their monthly amortizations, PDB initiated extrajudicial foreclosure proceedings on the real estate mortgage with the Provincial Sheriff in accordance with Act No. 3135, otherwise known as "An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real-Estate Mortgages." The Notice of Sheriff's Sale dated May 19, 1993 was prepared and issued by the Clerk of Court.

On May 21, 1993, the deputy sheriff issued a certificate of posting which was followed by the issuance of an affidavit of publication by the editor of Alppa Times on June 14, 1993. The deputy sheriff set the public auction sale of the mortgaged property on June 22, 1993 which was reset to July 22, 1993 upon the request of Spouses Ong.

On July 22, 1993, the mortgaged property was sold to PDB for P18,914,349.37.

On July 27, 1993, a certificate of sale over the mortgaged property was prepared and annotation on the title was made on August 18, 1993.

On September 2, 1993, within the one-year redemption period, PDB filed a petition for a writ of possession, which was granted by the RTC in its order dated March 15, 1994. On May 4, 1994, a writ of possession was issued. Spouses Ong filed a motion for reconsideration to recall the writ of possession, but it was denied by the RTC.

Thereafter, Spouses Ong filed a petition for prohibition and preliminary injunction before the CA to enjoin the public respondents from taking further action in connection with the extra-judicial foreclosure sale made on July 22, 1993 including the implementation of the writ of possession. On October 25, 1994, the CA rendered a decision^[4] dismissing their petition. Their motion for reconsideration was likewise denied.

On June 8, 2000, this Court issued a resolution^[5] dismissing the petition for review on certiorari filed by Spouses Ong questioning the October 25, 1994 CA decision.

On September 13, 2000, the Court issued a resolution^[6] denying with finality the motion for reconsideration filed by Spouses Ong. Thus, the June 8, 2000 Resolution of this Court became final and executory on November 9, 2000 per entry of judgment.^[7]

Records also show that on July 19, 1994, Spouses Ong instituted an action for annulment of extrajudicial foreclosure before the RTC alleging non-compliance with the formal requirements of notice and publication under Act No. 3135^[8] specifically that: 1) the sheriff failed to post the notice of sale in the premises of the mortgaged property and the place where the auction was conducted and other conspicuous public places within the Municipality of San Juan; and 2) the newspaper Alppa Times, where the notice of sale was published, was not a newspaper of general circulation. Spouses Ong likewise alleged that the interests and penalties on the loan were over-computed and the figures were bloated.

On the other hand, PDB countered that there were no irregularities in the conduct of the foreclosure proceedings explaining that: 1) the Notice of Sheriff's Sale dated May 19, 1993 was issued by the Office of the Clerk of Court and Ex-Officio Sheriff; 2) a Certificate of Posting was signed and issued by the deputy sheriff for the said foreclosure proceedings; and 3) the notice of sale was published once a week for three consecutive weeks in Alppa Times, as evidenced by the Affidavit of Publication dated June 14, 1993.

Decision of the RTC

On July 18, 2000, the RTC rendered a decision dismissing the complaint filed by Spouses Ong, the dispositive portion of which reads, as follows:

WHEREFORE, in view of the foregoing considerations, the instant complaint for annulment of extra-judicial foreclosure of real estate mortgage with application for preliminary injunction and/or Temporary Restraining Order filed by plaintiffs Spouses Victor Ong and Grace Tiu Ong against the defendants Premiere Development Bank, the Provincial Sheriff of Rizal, Grace S. Belvis and Deputy Sheriff Victor S. Sta. Ana is

hereby ordered DISMISSED.

Finding the counterclaim of private defendant Premiere Development Bank to be lacking in merit, the same is likewise ordered DISMISSED.

SO ORDERED.

The RTC ruled, among others, that Spouses Ong voluntarily and intelligently entered into a valid loan contract with the PDB. The latter was able to prove that Spouses Ong defaulted in the payment of their loan obligations, so it was proper for it to foreclose their collateral for the subject loan.

The RTC further held that there were no irregularities in the conduct of the foreclosure proceedings, which resulted in the grant of the writ of possession. First, Spouses Ong's claim of irregularities was never previously raised and contrary to their contentions during the proceedings for the issuance of the writ of possession. In fact, they intervened only at the time PDB requested for the issuance of a writ of possession. They did not question the conduct of the foreclosure particularly the alleged defect in the publication of the notice of sheriff's sale by Alppa Times.

Second, the affidavit of publication executed by the editor of Alppa Times entitled said document to be given full faith and credit in the absence of competent evidence showing that its due execution was tainted with defects and irregularities that would warrant a declaration of its nullity.

Third, the Notice of Sale was posted in a conspicuous place within the Municipal Hall of San Juan. Thus, the presumption of regularity in the performance of duty by the sheriff prevailed.

Fourth, it was established in the certification issued by the Office of the Clerk of Court that Alppa Times was duly accredited as a publisher of the notice of sheriff's sale at the time of the foreclosure of the subject property. Spouses Ong's self-serving statement that Alppa Times was not a newspaper of general circulation could not prevail over the issued certification by the Clerk of Court and Ex-Officio Sheriff.

Finally, the RTC found that the newspaper dealer and newspaper vendor presented by Spouses Ong were not expert witnesses or even competent enough to declare that Alppa Times was a non-existent publication and not a newspaper of general circulation.

Not satisfied with the Decision, Spouses Ong appealed before the CA in CA G.R. CV No. 68576 entitled *Spouses Victor Ong and Grace Tiu Ong v. Premier Development Bank, The Provincial Sheriff of Rizal Grace S. Belvis and Deputy Sheriff Victor S. Sta. Ana*.

Decision of the CA

On March 31, 2003, the CA affirmed *in toto* the RTC July 18, 2000 decision.

The CA ruled, among others, that the respondents complied with the notice

requirement under Act No. 3135. The CA found that the primary objective of the notice of sale was satisfied considering that there was sufficient publicity of the sale through a newspaper publication. It further stated that "courts take judicial notice that newspaper publications have far more reaching effects than posting on bulletin boards in public places. There is a much greater likelihood and probability that announcements or notices published in a newspaper of general circulation shall reach more people than those merely posted in a public bulletin board, no matter how strategic its location may be." Hence, the publication of the notice of sale in the newspaper of general circulation alone sufficiently complied with the notice and posting requirement of the law.

The CA likewise reasoned that Spouses Ong failed to discharge the burden of proving by convincing evidence that there was actually no compliance with the posting requirement. Therefore, the foreclosure proceedings had in its favor the presumption of regularity in the absence of evidence to the contrary. The CA also ruled that there was no proof that the property was sold for a price below its market value. Neither was there any proof shown of collusion among the respondents.

Moreover, the CA ruled that Alppa Times was a newspaper of general circulation for purposes of publication of notices of sale since it was enough that it was published for the dissemination of local news and general information; that it has a bona fide subscription list of paying subscribers; that it was published at regular intervals; and that it need not have the largest circulation or subscription.

Lastly, the CA ruled that Spouses Ong failed to prove that there was an error in the computation of their loan obligation. On the contrary, PDB was able to prove by preponderant evidence that Spouses Ong defaulted in the payment of their loan obligation.

Upon the denial of their motion for reconsideration, Spouses Ong filed this petition raising this lone

ISSUE

WHETHER OR NOT THE COURT OF APPEALS ERRED IN SUSTAINING THE VALIDITY OF THE EXTRA-JUDICIAL FORECLOSURE PROCEEDINGS.

Petitioners' Position

The following arguments were raised by Spouses Ong in support of their position that the subject foreclosure sale was null and void for non-compliance with the requirements of Act No. 3135.

- 1] There was no posting of the notice of sheriff's sale for at least twenty (20) days.
- 2] There was no showing that the notice of sale was posted in three (3) public places within the municipality.