

SECOND DIVISION

[G.R. No. 175697, March 23, 2011]

**RURAL BANK OF TOBOSO, INC. (NOW UCPB SAVINGS BANK),
PETITIONER, VS. JEAN VENIEGAS AGTOTO, RESPONDENT.**

[G.R. NO. 176103]

**JEAN VENIEGAS AGTOTO, PETITIONER, VS. RURAL BANK OF
TOBOSO, INC. AND ANTONIO ARBIS IN HIS CAPACITY AS EX-
OFFICIO PROVINCIAL SHERIFF OF NEGROS OCCIDENTAL,
RESPONDENTS.**

D E C I S I O N

ABAD, J.:

This case is about the foreclosure of a real estate mortgage for the whole amount of the loan when the mortgage covered only a part of it.

The Facts and the Case

On August 18, 1981 Jean Veniegas Agtoto (Agtoto) executed a special power of attorney (SPA) authorizing her husband, Rodney, to secure a loan on her behalf and mortgage a registered land that she owned.^[1] Using the SPA, on August 20, 1981 Rodney got a loan of P130,500.00 from the Rural Bank of Toboso, Inc. (the Bank), with the P61,068.00 portion secured by a real estate mortgage on his wife's land. On the following day, he secured the remaining P69,432.00 of the loan with a chattel mortgage over two service boats and one Yanmar Marine engine.

After paying only P14,500.00, Agtoto failed to pay her loan with the Bank. After several unheeded demands to pay, on August 6, 1990 the Bank extrajudicially foreclosed the mortgage on her land, pegging her debt at P130,500.00 as of December 31, 1989 plus the stipulated interest of 14% *per annum* from the date of default until full payment and liquidated damages. After notice and publication, the sheriff foreclosed the mortgage on the land on September 12, 1990 and sold it at public auction to the Bank, which made the highest bid of P305,000.00 "as of December 31, 1989" plus stipulated interest of 14% *per annum*. The sheriff subsequently issued a certificate of sale in the Bank's favor.

Later, Agtoto filed a complaint with the Regional Trial Court (RTC) of Bacolod City against the Bank for the annulment of the sale of her land, damages, and injunction with prayer for the issuance of a temporary restraining order (TRO).

On July 15, 1996 the RTC rendered a decision, ordering the Bank to pay Agtoto P305,000.00, which was its bid for her land, less the P61,068.00 due from her loan. On November 26, 1997 the RTC issued an order, amending the dispositive portion of

its decision to include an award of 6% interest *per annum* on the amount of the award, counted from the date of the auction sale on September 13, 1990 until Agtoto would have been fully paid; her previous payment of P14,500.00 could not be deducted from the principal loan, however, since this was charged against the interests, surcharges, and penalties due on her loan. Agtoto appealed to the Court of Appeals (CA) from the decision, asserting that the RTC erred in not declaring the foreclosure sale null and void.

On October 27, 2005 the CA affirmed the trial court's decision with modification in that it awarded to Agtoto P189,497.10 plus 12% interest *per annum* from January 29, 1992 or the date of judicial demand until full payment. Both parties brought the case to this Court through a petition for review, the Bank in G.R. 175697 and Agtoto in G.R. 176103.

The Issues Presented

The case presents the following issues:

1. Whether or not the Bank validly foreclosed on Agtoto's mortgaged land; and
2. Whether or not the Bank should pay P189,497.10 to Agtoto as excess bid proceeds with 12% interest *per annum*, computed from January 29, 1992, the date of judicial demand, until the award is fully paid.

The Rulings of the Court

Agtoto contends that the foreclosure sale was void since she did not authorize her husband, Rodney, to act as her attorney-in-fact for purposes of the foreclosure proceedings. As the appellate court correctly ruled, however, the powers she vested in Rodney as her attorney-in-fact in connection with the mortgage of her land included the power to constitute the mortgagee bank as Rodney's attorney-in-fact for foreclosure purposes for, otherwise, the grant to him of the power to enter into a mortgage contract would have been incomplete in the usual course.

Here, moreover, the SPA authorized Rodney to make, sign, execute, and deliver contracts, documents, agreements and other writings of whatever nature or kind, with any person or persons, upon such terms and conditions as were acceptable to him as attorney-in-fact.^[2] The constitution of the Bank as attorney-in-fact for purposes of extrajudicial foreclosure was a condition that Rodney accepted and it bound Agtoto as principal, the same being a legitimate exercise of his powers under the SPA. What is more, even assuming that Rodney exceeded his powers under the SPA, Agtoto should be deemed to have ratified the same when she herself signed the mortgage document.

The foreclosure sale covering the land was likewise valid, notwithstanding the chattel mortgage that covered the P69,432.00 portion of the loan of P130,500.00. The chattel mortgage was a contract distinct from the real estate mortgage, which latter mortgage covered the separate amount of P61,068.00. Thus, the Bank had no right to include in the foreclosure of the land the portion of the loan separately secured by the chattel mortgage.

The Court finds no reason to deviate from the CA's ruling that the proceeds of the