

THIRD DIVISION

[G.R. No. 184081, June 19, 2009]

**GLOBAL HOLIDAY OWNERSHIP CORPORATION, PETITIONER, VS.
METROPOLITAN BANK & TRUST COMPANY, RESPONDENT.**

DECISION

YNARES-SANTIAGO, J.:

This petition for review on certiorari assails the March 31, 2008 Decision^[1] of the Court of Appeals in CA-G.R. SP No. 97287, which annulled and set aside the July 26, 2006 and October 6, 2006 Orders of the Regional Trial Court of Makati, Branch 146, granting petitioner's prayer for a writ of preliminary injunction in Civil Case No. 06-549 and directed the judge to dissolve the said writ. Also assailed is the August 7, 2008 Resolution^[2] denying the motion for reconsideration.

The facts as found by the appellate court are as follows:

Global Holiday Ownership Corporation (Global for short) obtained on various dates several loans from x x x Metrobank in the total principal amount of P5,700,000.00 secured by a real estate mortgage over a condominium unit under Condominium Certificate of Title No. 29774 of the Registry of Deeds for Makati City. Upon default in the payment of the loan, x x x Global requested for a restructuring of its loan in the total principal amount of P6,375,000.00 as of September 3, 2001. (Metrobank) acceded to its request.

As x x x Global defaulted anew in the payment of its loan, it requested for another restructuring which was likewise granted by the bank. Hence, a Debt Settlement Agreement was executed by the parties on November 15, 2001 detailing a schedule of payment of the principal obligation of P6,375,000.00 within a 3-year period up to August 19, 2004 as well (sic) the interest on the principal, payable quarterly based on the prevailing market rates beginning December 2, 2001 and every 90 days thereafter, without need of notice or demand, the full payment of which shall be on or before August 29, 2002.

x x x x

Global failed to comply with the terms and conditions of the Debt Settlement Agreement. Despite demands made upon it for payment on December 22, 2005 and May 18, 2006, it still failed and refused to pay (Metrobank) the loans which are all past due.

Thus on May 22, 2006, (Metrobank) requested the Clerk of Court of the RTC of Makati City to cause the sale at public auction of CCT No. 29774

pursuant to Act 3135 as amended. The sale was scheduled on July 10, 2006 at 10:00 a.m. per notice of sheriff's sale.

Four (4) days before the date of the auction sale or on July 6, 2006, x x x Global filed the instant complaint for annulment of extrajudicial foreclosure proceedings, damages and injunction with application for TRO and/or writ of preliminary injunction. Respondent judge granted Global's application for temporary restraining order on July 7, 2006 and set the prayer for a writ of preliminary injunction for hearing on July 14, 2006. After hearing, respondent judge issued an Order on July 26, 2006 granting Global's application for a writ of preliminary injunction. (Metrobank) moved to reconsider this Order but respondent judge denied the motion in the Order dated October 6, 2006.^[3]

Metrobank filed a petition for certiorari before the Court of Appeals arguing that Global is not entitled to injunctive relief because it has not shown that it had a legal right that must be protected. Metrobank thus prayed that the trial court's issuances dated July 26, 2006 and October 6, 2006 be annulled and set aside.

(Metrobank) stresses that in view of x x x Global's admission that it failed to pay its loan, the latter has definitely no right *in esse* to be protected as it was clearly provided in the deed of real estate mortgage and in the Debt Settlement Agreement that the mortgage can be foreclosed by (Metrobank) in case of default.

(Metrobank) contends that x x x Global's claim of not having been notified of the foreclosure proceedings is debunked by the Certification issued by the Makati Central Post Office dated August 2, 2006 stating that a copy of the notice of sheriff sale was sent to Global and was received by it on June 23, 2006. Moreover, (Metrobank's) several demand letters to x x x Global urging it to pay its overdue account with a warning that in case of failure to do, actions to protect the bank's interests will be initiated, more than satisfies the requirement of notice. Additionally, (Metrobank) emphasizes that Sec. 14 of the real estate mortgage was already superseded by Sec. 5 of the Debt Settlement Agreement whereby Global waived its right to be personally notified in case of default.

(Metrobank) argues that no personal notice of the extrajudicial foreclosure is even required as said proceeding is an action in rem where only notice by publication and posting is necessary to bind the interested parties, citing *Bobanan vs. Court of Appeals*, G.R. No. 111654, April 18, 1996. The law itself, Act No. 3135, does not require personal notice to the mortgagor. Only notice by publication and posting are required. Likewise, (Metrobank) points to Administrative Matter No. 99-10-05-0 dated February 26, 2002 (Re: Procedure in the Extrajudicial Foreclosure of Mortgage) wherein the Supreme Court acknowledged that personal notice to the debtor-mortgagor in case of extrajudicial foreclosure of real estate mortgage is not required by Act No. 3135 as the addition of such requirement can only make the proceedings cumbersome.

For its part, x x x Global avers that after it defaulted in its quarterly

payment under the Debt Settlement Agreement, (Metrobank) informed it on May 30, 2003 that its account is being considered for transfer to a Special Purpose Vehicle under the SPV Act of 2002. Within the period given to signify its conformity to the plan, x x x Global wrote (Metrobank) on July 4, 2003 informing (Metrobank) that it is (sic) amenable to its proposal to transfer the loan to a special purpose vehicle company. Instead of transferring its account to a SPV Company, (Metrobank) decided to proceed with the extrajudicial foreclosure of the mortgaged property with the sheriff setting the auction sale on July 10, 2006. Such being the case, there is nothing that can be ascribed in the July 26, 2006 Order of respondent judge that could be considered whimsical, capricious, arbitrary and despotic, x x x Global asserts.

Mere failure to pay a secured obligation, according to Global, does not give the mortgagee bank the unbridled right to foreclose the mortgage, more so in this case when the interest rate on a loan is unilaterally imposed or increased by (Metrobank) without Global's consent, in violation of mutuality of contract. Besides, there is already a perfected contract between (Metrobank) and x x x Global to transfer the latter's account to a special purpose vehicle company.

Finally, x x x Global claimed that it has not waived its right to be notified of the foreclosure when it executed the Debt Settlement Agreement. The statement "without need of demand" in the debt settlement agreement refers to the payment of the principal and interest, which is different from notice of extrajudicial foreclosure that is required to be given to a mortgagor.^[4]

In the assailed March 31, 2008 Decision, the Court of Appeals granted Metrobank's petition and set aside the July 26, 2006 and October 6, 2006 orders of the trial court, with a directive to dissolve the writ of preliminary injunction it issued. The appellate court found that Global had no legal right to an injunction; that Metrobank had the undeniable right to foreclose on the real estate mortgage in view of Global's default in the settlement of its obligation to the bank; that Global had not shown any legal justification to enjoin it from enforcing this right; that it is not required that Global be personally informed of the foreclosure of its mortgaged property, since personal notice is not necessary; the applicable law - Act 3135^[5] - requires only notice by publication and posting; that under Administrative Matter No. 99-10-05-0^[6] in relation to Act 3135, as amended, personal notice to the debtor-mortgagor in case of extrajudicial foreclosure of real estate mortgage is not required; and that by declaring that the foreclosure proceedings were defective and null and void, the trial court's issuances granting Global's prayer for a writ of preliminary injunction constituted a premature disposition of the case on its merits, a pre-judgment that went beyond the nature of the proceeding then being taken, which was merely for the issuance of a writ of preliminary injunction.^[7]

Global moved to reconsider the decision, however, it was denied by the Court of Appeals in the assailed August 7, 2008 Resolution.

Hence, this petition by Global raising the following as errors:

First Assigned Error:

The Honorable Court of Appeals (erred in) ruling x x x that personal notice to the debtor-mortgagor of the extrajudicial foreclosure is not necessary despite the parties' stipulation in their Real Estate Mortgage contract requiring personal notice thereof x x x.

Second Assigned Error:

The Honorable Court of Appeals seriously erred in its interpretation and application of Supreme Court Administrative Matter No. 99-10-05-0 dated February 26, 2002 that in extrajudicial foreclosure of real estate mortgage, personal notice to the debtor-mortgagor is not necessary.

Third Assigned Error:

The Honorable Court of Appeals erred in applying the superseded case of *Cortez v. Intermediate Appellate Court* (G.R. No. 73678, July 21, 1989) in support of its ruling that the parties' stipulation in their Real Estate Mortgage contract requiring all correspondence relative to the mortgage to be sent at the mortgagor's given address is a mere expression of "general intent" which cannot prevail over the parties' "specific intent" to apply the provisions of Act 3135 in the extrajudicial foreclosure of the mortgage as the same is contrary to subsequent rulings of the Supreme Court.

Fourth Assigned Error

The Honorable Court of Appeals erred in relying on the cases of *BPI Family Savings Bank, Inc. v. Veloso*, 436 SCRA 1; *China Banking Corporation v. CA*, 265 SCRA 327; and *Selegna Mgnt. & Devt. Corp. v. UCPB*, G.R. No. 165662, May 3, 2006, to support its findings that petitioner has no clear legal right to be protected, since the trial court's issuance of the injunctive writ was founded on the mortgagee's non-compliance with the stipulated personal notice to the mortgagor.

Fifth Assigned Error

The Honorable Court of Appeals' ruling that there was no perfected contract to transfer petitioner's account to a Special Purpose Vehicle despite its finding that respondent MBTC made a proposal thereon to GHOC is contrary to the provision of Article 1319 of the Civil Code of the Philippines since there was unqualified acceptance of the proposal.

Sixth Assigned Error

The Honorable Court of Appeals erroneously ruled that petitioner was personally notified of the foreclosure proceedings as evidenced by the Certification of the Clerk of Court of Makati RTC when such Certification is non-existent in the records of the case.

Seventh Assigned Error

The Honorable Court of Appeals erred in denying petitioner's Motion for Reconsideration despite the apparent falsified Certification submitted by respondent thru its Comment to the motion.

Eighth Assigned Error

The Honorable Court of Appeals seriously erred in finding that the grant by the trial court of the injunctive writ is completely without justification and in grave abuse of its discretion.

The issues for resolution are: whether Metrobank's failure to serve personal notice upon Global of the foreclosure proceedings renders the same null and void; and whether the trial court properly issued a writ of injunction to prevent Metrobank from proceeding with the scheduled auction sale of Global's condominium unit.

We grant the petition.

Paragraph 14 of the real estate mortgage contract states that:

All correspondence relative to this mortgage, including demand letters, summonses, subpoenas or notifications of any judicial or extra-judicial actions shall be sent to the Mortgagor at the address hereinabove given or at the address that may hereafter be given in writing by the Mortgagor to the Mortgagee, and the mere act of sending any correspondence by mail or by personal delivery to the said address shall be valid and effective notice to the Mortgagor for all legal purposes, and the fact that any communication is not actually received by the Mortgagor, or that it has been returned unclaimed to the Mortgagee, or that no person was found at the address given, or that the address is fictitious, or cannot be located, shall not excuse or relieve the Mortgagor from the effect of such notice.^[8]

This specific provision in the parties' real estate mortgage agreement is the **same** provision involved in the case of *Metropolitan Bank and Trust Company v. Wong*,^[9] where the Court made the following pronouncement:

It is bad enough that the mortgagor has no choice but to yield his property in a foreclosure proceeding. It is infinitely worse, if prior thereto, he was denied of his basic right to be informed of the impending loss of his property. This is another instance when law and morals echo the same sentiment.

x x x x

Thus, disregarding all factual issues which petitioner interjected in his petition, the only crucial *legal queries* in this case are: *first*, is personal notice to respondent a condition *sine qua non* to the validity of the foreclosure proceedings? and, *second*, is petitioner's non-compliance with the posting requirement under Section 3, Act No. 3135 fatal to the validity of the foreclosure proceedings?

In resolving the first query, we resort to the fundamental principle that a