

## SECOND DIVISION

[ G.R. No. 178479, October 23, 2009 ]

**METROPOLITAN BANK & TRUST CO., PETITIONER, VS. NIKKO SOURCES INTERNATIONAL CORP., AND SUPERMAX PHILIPPINES, INC., RESPONDENTS.**

### DECISION

**CARPIO MORALES, J.:**

Respondent Supermax Philippines, Inc. (Supermax) obtained loans in 1999 from Metropolitan Bank and Trust Company (petitioner) totaling P24,600,000.<sup>[1]</sup> To secure the loans, its co-respondent Nikko Sources International Corporation mortgaged a parcel of land covered by Transfer Certificate of Title No. T-763001 in its name.<sup>[2]</sup>

Supermax failed to pay the loans upon maturity, hence, petitioner filed a petition for extra-judicial foreclosure of the mortgage before a notary public in Cavite.<sup>[3]</sup> A Notice of Sale<sup>[4]</sup> scheduled on August 4, 2000 was rescheduled to November 7, 2000 on petitioner's request,<sup>[5]</sup> and finally to November 14, 2000 on respondent's request.

Four days before the finally rescheduled public auction sale or on November 10, 2000, respondents filed before the Regional Trial Court (RTC) of Bacoor, Cavite a Complaint<sup>[6]</sup> against petitioner and the notary public, docketed as Civil Case No. BCV 2000-146, for declaration of nullity of notice of sale and increase in interest rates and damages, with prayer for the issuance of temporary restraining order (TRO) and/or writ of preliminary injunction, alleging that their failure to pay the loans was due to the unilateral imposition of exorbitant interest rate by petitioner from 16.453% to 18.5% in a matter of months;<sup>[7]</sup> and that petitioner reset the auction sale to November 14, 2000 without complying with the posting and publication requirements.<sup>[8]</sup>

Branch 19 of the Bacoor RTC issued a TRO and eventually a writ of preliminary injunction.<sup>[9]</sup> Petitioner filed a Motion to Dissolve the writ<sup>[10]</sup> which the trial court denied,<sup>[11]</sup> it finding that, among other things, petitioner did not comply with the requirements of the law on notice and publication of the auction sale. Its Motion for Reconsideration<sup>[12]</sup> having been denied,<sup>[13]</sup> petitioner filed a petition<sup>[14]</sup> for Certiorari before the Court of Appeals.

By Decision<sup>[15]</sup> of December 4, 2006, the Court of Appeals, finding that petitioner failed to comply with Section 3 of Act No. 3135 (An Act to Regulate the Sale of Property Under Special Powers Inserted In or Annexed to Real Estate Mortgages), as amended and Circular No. 7-2002 (Guidelines for the Enforcement of Supreme Court

Resolution of December 14, 1999 in Administrative Matter No. 99-10-05-0 (Re: Procedure in Extra-Judicial Foreclosure of Mortgage), as Amended by the Resolutions dated January 30, 2001 and August 7, 2001)<sup>[16]</sup> of this Court, dismissed the petition. Petitioner's Motion for Reconsideration<sup>[17]</sup> having been denied,<sup>[18]</sup> it filed the present Petition for Review,<sup>[19]</sup> alleging that the Court of Appeals

**x x x DECIDED A QUESTION IN A WAY NOT IN ACCORDANCE WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE HON. SUPREME COURT WHEN IT UPHELD THE ASSAILED ORDERS OF THE LOWER COURT AND ENJOINED THE AUCTION SALE OF THE SUBJECT PROPERTY DESPITE THE EXISTENCE OF VALID AND LEGAL GROUNDS [FOR] DISSOLVING THE WRIT OF PRELIMINARY INJUNCTION.**

**x x x DEPARTED FROM THE USUAL COURSE OF PROCEEDING OR SANCTIONED SUCH DEPARTURE BY THE LOWER COURT IN THAT ACT NO. 3135, AS AMENDED, REQUIRES THE REPUBLICATION OF THE NOTICE OF SALE DESPITE THE FACT THAT THE RESPONDENTS REQUESTED FOR THREE POSTPONEMENTS OF THE AUCTION SALE AND WHICH WAS SCHEDULED LONG BEFORE THE EFFECTIVITY OF CIRCULAR NO. 7-2002.**<sup>[20]</sup> (Emphasis in the original)

In the meantime, the trial court dismissed Civil Case No. BCV-2000-146 for failure of respondents and their counsel to appear during pre-trial.<sup>[21]</sup> Respondents' Motion for Reconsideration<sup>[22]</sup> was denied,<sup>[23]</sup> hence, they filed a Notice of Appeal<sup>[24]</sup> which the trial court gave due course to.<sup>[25]</sup>

Petitioner now contends that with the dismissal of Civil Case No. BV-2000-146, the Writ of Preliminary Injunction being challenged by them in the present petition *ipso facto* ceased to exist.<sup>[26]</sup> Respondents counter, however, that their Notice of Appeal of the dismissal of the case was given due course by the trial court, hence, the writ stands.

On the merits, petitioner argues:

x x x [I]n deciding to uphold the ruling of the trial court, the Honorable Court of Appeals reasoned that, under *Circular No. 7-2002*, which took effect on 22 April 2002, republication of a subsequent date of the foreclosure sale is unnecessary, provided that the said subsequent date be indicated in the original Notice of Sale. Hence, as the foreclosure sale in this instance was intended to be held on 14 November 2000, **before** the said Circular took effect, there was a need for the Notice of Sale to be re-published and re-posted.

However, **prior to the effectivity of Circular No. 7-2002, there was neither any statute nor judicial pronouncement from the Hon.**

**Supreme Court requiring republication and reposting of a Notice of Sale in the event foreclosure did not proceed on the date originally intended.**

The Honorable Court of Appeals, however, anchored its Decision [on] the case of **Philippine National Bank vs. Nepomuceno Productions, Inc., 394 SCRA 405**, which was, however, promulgated by the Hon. Supreme Court on **27 December 2002** or more than two (2) years *after* the intended auction sale in the instant case on **14 November 2000**.<sup>[27]</sup> (Emphasis and underscoring in the original; italics supplied)

The sale at public auction of the properties covered by the foreclosed mortgage in *Philippine National Bank v. Nepomuceno Productions, Inc.*<sup>[28]</sup> cited by petitioner took place in 1976, also prior to the effectivity on April 22, 2002 of this Court's Circular No. 7-2002. The Court therein held that under Act No. 3135, as amended, republication as well as reposting of the notice of sale is required if the foreclosure does not proceed on the date *originally* intended.

The principal object of a notice of sale in a foreclosure of mortgage is not so much to notify the mortgagor as to inform the public generally of the nature and condition of the property to be sold, and of the time, place, and terms of the sale. Notices are given to secure bidders and prevent a sacrifice of the property. Clearly, the statutory requirements of posting and publication are mandated, not for the mortgagor's benefit, but for the public or third persons. In fact, personal notice to the mortgagor in extrajudicial foreclosure proceedings is not even necessary, unless stipulated. As such, it is imbued with public policy considerations and any waiver thereon would be inconsistent with the intent and letter of Act No. 3135.

Moreover, statutory provisions governing publication of notice of mortgage foreclosure sales must be strictly complied with and slight deviations therefrom will invalidate the notice and render the sale at the very least voidable.

x x x x

Thus, in the recent case of *Development Bank of the Philippines v. Aguirre*,<sup>[29]</sup> the foreclosure sale held more than two (2) months after the published date of sale was considered void for lack of republication. Similarly, in the instant case, the lack of republication of the notice of the December 20, 1976 foreclosure sale renders it void.

The right of a bank to foreclose a mortgage upon the mortgagor's failure to pay his obligation must be exercised according to its clear mandate, and every requirement of the law must be complied with, lest the valid exercise of the right would end. The exercise of a right ends when the right disappears, and it disappears when it is abused especially to the prejudice of others.<sup>[30]</sup> (Emphasis and underscoring supplied)