

THIRD DIVISION

[G.R. No. 182735, December 04, 2009]

**SPS. ROGELIO MARCELO & MILAGROS MARCELO, PETITIONERS,
VS. PHILIPPINE COMMERCIAL INTERNATIONAL BANK (PCIB),
RESPONDENT.**

D E C I S I O N

CHICO-NAZARIO, J.:

Debts are nowadays like children begot with pleasure, but brought forth in pain.

Moliere

Before this Court is a Petition for Review on *Certiorari*, under Rule 45 of the Rules of Court, filed by spouses Rogelio Marcelo and Milagros Marcelo (spouses Marcelo) assailing the Decision^[1] dated 31 January 2007 and the Resolution^[2] dated 29 August 2007 of the Court of Appeals in CA-G.R. CV No. 82424, upholding the validity of the extra-judicial foreclosure proceedings initiated by Philippine Commercial International Bank (PCIB) and the subsequent public auction sale conducted against their properties.

The antecedent facts of the case are as follows:

The spouses Marcelo obtained from PCIB several loans in staggered amounts within the period 1996-1997. In turn, they executed promissory notes in favor of PCIB summarized as follows^[3]:

Promissory Note Number	Principal Amount	Date of Instrument	Maturity Date
97-115 ^[4]	P500, 000.00	2 June 1997	1 December 1997
97-116 ^[5]	P500, 000.00	4 June 1997	1 December 1997
97-117 ^[6]	P200, 000.00	9 June 1997	8 December 1997
97-124 ^[7]	P990, 000.00	16 June 1997	15 December 1997
97-138 ^[8]	P500, 000.00	14 July 1997	12 January 1998
97-175 ^[9]	P800, 000.00	20 August 1997	16 February 1998
162/96 ^[10]	P1,700, 000.00	27 November 1996	26 May 1997

Each Promissory Note had a corresponding Disclosure Statement in compliance with Republic Act No. 3765 signed by spouses Marcelo acknowledging and conforming to the terms and conditions attached to their credit transactions.

On 3 June 1997, to secure the payment of their loans, including any extension or

renewal of the credit and all other obligations, whether contracted before, during or after the constitution of a Real Estate Mortgage (REM), amounting to P3,990,000.00 representing their entire principal obligations under PN No. 162/96, No. 97-124, No. 97-138 and No. 97-175, the spouses Marcelo executed an REM^[11] over six parcels of land all situated in Baliuag, Bulacan with an aggregate area of 2,780 square meters and registered in their names under Transfer Certificates of Title (TCTs) No. T-91170,^[12] No. T-93936,^[13] No. T-91169,^[14] No. T-93935,^[15] No. T-2524^[16] and No. T-16803.^[17]

The REM assured PCIB of the following remedy:

In the event the Mortgagor/Borrower defaults in the obligations hereby secured, breaches or fails to comply with any of the terms and conditions stipulated in this mortgage or in the separate instruments evidencing the obligations hereby secured, or institutes suspension of payments or insolvency proceedings or to be involuntarily declared insolvent, or if this mortgage cannot be recorded in the Registry of Deeds (hereinafter referred to as "events of default"), the Mortgagee may foreclose this mortgage extra-judicially in accordance with Act No. 3135, as amended, or judicially in accordance with the Rules of Court. Should the Mortgagee be compelled to foreclose this mortgage or to take any other legal action to protect its interest, the Mortgagor/Borrower shall pay attorney's fees which are hereby fixed at 15% of the total obligation that is unpaid exclusive of all costs and fees allowed by law.^[18]

The spouses Marcelo defaulted on the payment of their outstanding loans, prompting PCIB to make repeated demands for its payment as evidenced by PCIB's final demand letter^[19] dated 19 June 1998 on the outstanding obligation of the spouses amounting to P6,836,931.05 as of 30 May 1998. The unpaid obligation mounted up to P7,628,501.98 as of 30 April 2003.^[20]

On 3 August 1998, PCIB file a Petition for Extra-judicial Foreclosure over the mortgaged properties before the Regional Trial Court (RTC) of Malolos, Bulacan.^[21]

A Notice of Sheriff's Sale^[22] dated 7 August 1998 was issued by the Provincial Sheriff of Bulacan thru Sheriff IV Junie Jovencio E. Ipac (Sheriff Ipac). The said Notice was posted on the Meralco posts within the vicinities of Baliuag Roman Catholic Church, Baliuag Public Market and the chapel of Sabang, Baliuag, Bulacan as evidenced by the Affidavit of Posting^[23] executed by Sheriff Ipac dated 7 August 1998.^[24]

The Notice was also sent by registered mail to PCIB and spouses Marcelo,^[25] but the latter denied receiving the same.^[26]

The Notice of the Sheriff's Sale was, likewise, published in *The Times Newsweekly*, a newspaper of general circulation as evidenced by the Affidavit of Publication^[27] dated 5 September 1998 and copies of publications dated 22 August 1998,^[28] 29

August 1998^[29] and 5 September 1998.^[30]

On 15 September 1998, the Office of the Provincial Sheriff of Bulacan conducted a public auction sale over the six parcels of land, and the same were sold to PCIB represented by Reynaldo Gatmaitan for P5,616,000.00.^[31] The Certificate of Sale^[32] issued to PCIB dated 28 October 2008 was then annotated on the TCTs of the subject lands on 10 November 1998.^[33]

Shortly before the expiration of the redemption period, spouses Marcelo filed a Complaint^[34] before RTC Bulacan on 26 October 1999, alleging (1) PCIB's violations of the terms and conditions of the REM contract and the Promissory Notes by demanding exorbitant interest rates and unnecessary bank charges without them being notified; and (2) irregularities in the foreclosure proceedings for failure to comply with the posting and publication requirements as mandated by Act No. 3135. The spouses Marcelo prayed for the nullification of the foreclosure proceedings and the issuance of a Temporary Restraining Order (TRO) against PCIB to prevent the latter from taking possession of the foreclosed properties.

On 5 November 1999, the trial court issued an Order^[35] denying the spouses Marcelo's application for a TRO for want of merit and directed further proceedings on the case. The trial court maintained that the publication of the Notice of Sale in *The Times Newsweekly* necessarily connoted that said publication was duly accredited by the trial court, having been allowed by the Ex-Officio Sheriff.

Quoting *Olizon v. Court of Appeals*,^[36] the trial court declared that the lack of personal notice to the mortgagors is not a ground to set aside the foreclosure sale. Notices are given for the purpose of securing bidders and preventing a sacrifice of the property. If these objects are attained, immaterial errors and mistakes will not affect the sufficiency of the notice.

PCIB, in its Motion to Dismiss^[37] filed on 3 January 2000, contended that the Complaint filed was empty rhetoric designed to delay its right under Section 7^[38] of Act No. 3135, as amended by Act 4118, to take possession of the foreclosed property even during the redemption period of one year. It added that the matters are now *fait accompli*, for it had already foreclosed the properties and the one-year redemption period had already lapsed.

The spouses Marcelo opposed the above Motion by emphasizing the need for a full-blown trial as necessitated by the trial court in its Order dated 5 November 1999. They, likewise, reiterated the alleged irregularity in the foreclosure of their properties not offered as collaterals and the non-compliance with the posting, publication and raffle requirements, making the foreclosure proceedings invalid.^[39]

In its Reply^[40] filed on 21 January 2000, PCIB merely restated its averments in its Motion to Dismiss.

On 24 March 2000, the trial court issued an Order^[41] denying the Motion to Dismiss filed by the PCIB. It declared that there remained the imperative need of ascertaining the actual amount of the indebtedness outstanding and due for the

court to determine whether the foreclosure proceedings were valid or not. It ordered the PCIB to submit its answer to the Complaint.

PCIB, in its Answer^[42] filed on 13 April 2000, put up a compulsory counterclaim for damages and attorney's fees in addition to its averments in its Motion to Dismiss and Reply.

In their Reply^[43] filed on 12 May 2000, the spouses Marcelo prayed that the *status quo* be maintained and the foreclosure sale be declared null and void for not complying with the jurisdictional requirement of posting, publication and raffle.

In its Decision^[44] dated 12 December 2003, the trial court, sustaining the legal presumption of regularity in the performance of Sheriff Ipac's official duty in the foreclosure proceedings, cited this Court in *Philippine National Bank v. International Corporate Bank*,^[45] reiterating that the law does not require that a personal notice of the auction sale be given to the mortgagor.

The RTC affirmed, as well, PCIB's allegation of laches against spouses Marcelo, stating, among other things, that the action was but a much-delayed afterthought following the spouses Marcelo's neglect to seek an accurate accounting of their loan obligation and their omission to redeem their properties within the period prescribed by law. Hence, it decreed:

WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the above-entitled complaint for insufficiency of evidence to warrant the reliefs prayed for therein as well as the pecuniary counterclaim of defendant Philippine Commercial International Bank.^[46]

Acting on the spouses Marcelo's Motion for Reconsideration,^[47] the trial court issued an Order^[48] dated 10 March 2004 reversing itself and rendering the extra-judicial foreclosure proceedings null and void for being violative of Act No. 3135.

The trial court, in granting the Motion, submissively agreed with the spouses Marcelo's suppositions, thus:

All told, the Court agrees with the argument of [Sps. Marcelo] that the provision of law requiring the posting of the notices of sale of a property subject of extra-judicial foreclosure have not been faithfully complied with in the proceedings complained of in the case at bar. By such token, the aforesaid extra-judicial foreclosure proceedings must be nullified for having been violative of the law on the matter. If for that reason alone, the Court withdraws its application in the assailed decision of "the legal presumption that the public functionaries involved in the foreclosure proceedings, particularly the sheriff concerned, `regularly performed' their official duties in that specific respect. [par. (m), Sec. 3, Rule 131 of the Revised Rules of Court].^[49]

In pronouncing non-compliance with the publication requirement as necessitated by Act No. 3135, the trial court decreed that the publication of the Notice of Sheriff's Sale in *The Times Newsweekly*, being a tabloid with few stale news items, was insufficient to meet the publication requirement of the law, the same having commanded very minimal readership. Hence:

WHEREFORE, premises considered, the aforementioned Motion for Reconsideration submitted by [the spouses Marcelo] vis-à-vis the decision dated 12 December 2003 is hereby GRANTED. Accordingly, the aforesaid decision, particularly its dispositive portion, is hereby set aside and, in lieu thereof, another judgment is hereby rendered declaring null and void the extra-judicial foreclosure proceedings initiated by [respondent] Philippine Commercial International Bank against the properties mortgaged in its favor by spouses Rogelio Marcelo and Milagros Marcelo and all the incidents appurtenant thereto, including the public auction sale conducted, the certificate of sale issued pursuant thereto and the annotation thereof in [the spouses Marcelo] transfer certificates of title.^[50]

Aggrieved, PCIB appealed the above Order to the Court of Appeals on 31 March 2004.^[51]

The Court of Appeals, in its Decision^[52] dated 31 January 2007, overturned the appealed Order. The appellate court held that the publication of the Notice of Sheriff's Sale at *The Times Newsweekly*, as recognized by the Executive Judge of the trial court, was in compliance with the publication requirement for the foreclosure sale.

The appellate court, defining *public place* as any location that the local state or national government maintains for the use of the public such as highway, park or public building, maintained that the posting of the said notices at the Meralco posts satisfies the mandates of Act. No. 3135 as to posting requirement, for what is material is the accessibility of the said posted notices to the general public. Finding refuge in case law, it added that supposed there was really a defect in posting, still the publication of the notice in a newspaper of general circulation in the city or municipality where the mortgaged property was situated cured the infirmity. Therefore, it ruled:

WHEREFORE, premises considered, the appealed Order dated March 10, 2004 is **REVERSED** and **SET ASIDE**. In lieu thereof, another is entered ordering the **REINSTATEMENT** of the trial court's December 12, 2003 Decision.^[53]

The Court of Appeals, in its Resolution^[54] dated 29 August 2007, denied the petitioners' Motion for Extension of Time to file Motion for Reconsideration of its 31 January 2007 Decision, on the ground that the time for filing the same was non-extendible; Petitioners' Motion for Reconsideration was denied for being filed 11