

FIRST DIVISION

[G.R. No. 137566, February 28, 2001]

**ROBERTO G. ROSALES, AS SUCCESSOR-IN-INTEREST OF
NAPOLEON S. ROSALES AND LUIS BUSTILLO, PETITIONERS, VS.
THE HON. COURT OF APPEALS AND NATIONAL DEVELOPMENT
CORPORATION, AS SUBSTITUTED PLAINTIFF AND THE
SUCCESSOR-IN-INTEREST OF CONTINENTAL BANK,
RESPONDENTS.**

D E C I S I O N

YNARES-SANTIAGO, J.:

This is a petition for review assailing the decision of the Court of Appeals dated January 6, 1999, and the resolution dated February 18, 1999, in CA-G.R. SP No. 46391.

On April 12, 1966, the Continental Bank instituted Civil Case No. 612 with the then Court of First Instance of Balayan, Batangas, Branch 7, entitled, "*Continental Bank, Plaintiff versus Atlas Timber Company, Napoleon S. Rosales and Luis Bustillo, Defendants.*" The complaint^[1] alleged that Atlas Timber Company, through its Managing Partner Napoleon Rosales, and Luis Bustillo in his personal capacity, executed in favor of Continental Bank a promissory note dated August 11, 1965, in the amount of P1,000,000.00; that as security for the payment of the note, Bustillo executed in favor of the bank a real estate mortgage over forty-four (44) parcels of land registered in his name under Transfer Certificate of Title No. T-11337, situated in Nasugbu, Batangas; that likewise as security for the payment of the note, Rosales executed a real estate mortgage over forty-nine (49) parcels of land registered in his name under TCT Nos. T-11828 and T-11839, also in Nasugbu, Batangas; that defendants failed and refused to pay the first amortization on the loan of P90,000.00, thus rendering the whole principal amount thereof due and demandable. Plaintiff bank prayed that defendants be ordered to pay the amount of One Million Pesos (P1,000,000.00) with interest thereon at 8% per annum and attorney's fees equivalent to 10% thereof, and, in default thereof, that the real estate mortgages executed by defendants Rosales and Bustillo in favor of the bank be judicially foreclosed.

In their Answer with Counterclaim,^[2] defendants admitted the execution of the promissory note and real estate mortgages. By way of affirmative defenses, they averred that the loan was applied for under the Industrial Guaranty Loan Fund (IGLF) of the Central Bank, through Continental Bank, and was intended for the completion of the veneer plant of Atlas Timber Company, then being constructed in Butuan City. Pursuant to the terms of the Fund, the proceeds of the loan in the amount of P1,000,000.00 were deposited by the Central Bank with Continental Bank. Upon the assurance by Continental Bank that the full amount of P1,000,000.00 will be released to them, defendants executed the promissory note

and real estate mortgages. However, instead of delivering to them the entire amount of P1,000,000.00, Continental Bank delivered only P424,000.00 and retained the balance of P576,000.00, despite repeated demands for the turn-over thereof. Consequently, defendants were unable to complete the construction of the plant and to manufacture veneer for exportation to the United States. Defendants, therefore, set up a counterclaim for pecuniary, moral and exemplary damages and for attorney's fees.

Continental Bank filed its answer to the counterclaim, alleging that out of the net proceeds of the loan, in the amount of P999,730.00, the sum of P575,535.82 was applied to previous loans obtained by Atlas Timber for the initial construction of the veneer plant.

On December 16, 1974, the trial court rendered its decision,^[3] the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered as follows:

(1) Ordering the defendants Atlas Timber Company and Napoleon S. Rosales, jointly and severally, to pay plaintiff bank the sum of P1 million with interest at the rate of 8% per annum from August 11, 1965 until fully paid and the further sum equivalent to 10% of the total amount due, as and for attorney's fees, plus costs of suit, and which defendants shall pay within ninety (90) days from date of receipt of this decision;

(2) In default of such payment, the mortgaged properties including the improvements existing thereon covered by OCT (*sic*) No. T-11337 and TCT No. 11282, both of the Land Records of Batangas, shall be sold at public auction to satisfy the judgment herein, without prejudice to the issuance of writ of execution against defendants Atlas Timber Company and Napoleon S. Rosales in the event that the proceeds of the foreclosure sale be insufficient to satisfy the entire judgment.

SO ORDERED.^[4]

Subsequently, the trial court issued an Order dated April 22, 1975,^[5] amending the aforesaid decision as follows:

Finding plaintiff's motion to amend the decision dated December 16, 1974 to be well-founded, same is hereby granted, and the dispositive part of the decision specifically paragraph 2 thereof, is hereby amended in the sense that Original Transfer Certificate of Title No. T-11337 should read as Transfer Certificate of Title No. T-11337 and that Transfer Certificate of Title No. T-11839 registered in the name of Napoleon S. Rosales given as security for the obligation mentioned in the complaint should be included in the public auction sale to satisfy the judgment in case of default in the payment of the obligation.

SO ORDERED.

On July 14, 1975, after ascertaining that defendants have failed to pay the judgment debt within ninety (90) days from January 25, 1975, when service of the

decision on them was deemed completed, the court issued the Writ of Execution,^[6] commanding the Branch Deputy Sheriff to sell at public auction the lands covered by TCT Nos. T-11337, T-11828, and T-11839.

At the foreclosure sale, Continental Bank was awarded the lands as the highest bidder for the price of P120,500.00. Accordingly, the Branch Deputy Sheriff of the CFI, Branch VII, Balayan, Batangas, executed the Officer's Deed of Sale^[7] on September 25, 1975, conveying to Consolidated Bank the mortgaged parcels of land.

On October 30, 1975, Continental Bank filed a Motion for Confirmation of Officer's Deed of Sale and To Order Issuance of Certificate of Final Record.^[8] The hearing on the motion was set on December 3, 1975, and later reset to February 20, 1976. In the meantime, Atty. Santiago F. Alidio, collaborating counsel for defendants, filed a Manifestation and Motion,^[9] alleging that he had been designated as the City Legal Officer of the City of Manila since December 20, 1974; and that on February 20, 1976, he was directed by the Mayor of Manila to attend a conference at Malacañang Palace with Presidential Assistant Juan C. Tuvera. Hence, he moved that his appearance at the hearing on said date be dispensed with and that defendants and their lead counsel, Atty. Tagalo, be served notice of hearing.

The lower court issued an Order dated June 15, 1976,^[10] denying Atty. Alidio's prayer for deferment of the hearing and granting the confirmation and approval of sheriff's sale.

On September 19, 1996, petitioners Roberto G. Rosales, as successor-in-interest of Napoleon S. Rosales, and Luis Bustillo, filed with the lower court, then designated as the Regional Trial Court of Balayan, Batangas, Branch 9, a Motion to Reopen the case, on the ground that defendants and their lead counsel never received the decision dated December 16, 1974; that they were never notified of any hearing for the confirmation of the Sheriff's Deed of Sale; and that the lower court did not conduct a hearing prior to the issuance of its Order dated June 15, 1976, confirming the Sheriff's Deed of Sale. Petitioners prayed, among others, that the sheriff's sale and order of confirmation be set aside; and that another ninety-day period be fixed within which they shall pay the judgment debt.

In an Order dated March 17, 1997,^[11] the trial court denied petitioners' motion to reopen the case.

Meanwhile, on June 30, 1997, the lower court, resolving an *Ex-Parte* Motion to Order the Issuance of Final Deed of Sale filed by National Development Corporation, the successor-in-interest of Continental Bank, ruled as follows:

Perforce, the Sheriff does not have any option but to execute the Final Deed of Sale as mandated by Section 63 (a) of P.D. 1529 and there is no need for the Court's intervention in order for the sheriff to discharge his mandated function. For to do so, it would leave into the hands of the Sheriff the power to determine when to transfer the property to the purchaser as he wishes to.

ACCORDINGLY, the ex-parte motion is hereby DENIED.^[12]

On that same date of June 30, 1997, the Ex-Officio Sheriff of the Regional Trial Court of Balayan, Batangas, executed the Final Deed of Sale in favor of Continental Bank.^[13]

Petitioners filed a motion for reconsideration of the denial of their motion to reopen the case, but the same was denied on November 4, 1997.^[14] Thus, on January 2, 1998, petitioners filed with the Court of Appeals a petition for *certiorari*, docketed as CA-G.R. SP No. 46391, entitled, *"Roberto G. Rosales, as successor-in-interest of Napoleon S. Rosales and Luis F. Bustillo, Petitioners versus Hon. Elihu A. Ybañez as Presiding Judge of the Regional Trial Court of Balayan, Batangas, Branch 9; National Development Corporation, as substituted plaintiff and successors in interest of Continental Bank; and, Arturo G. Matibag, as Ex-Officio Sheriff of Balayan, Batangas, Respondents."*^[15]

Petitioners argued, in fine, that the lower court amended the decision in its Order dated April 22, 1975, by adding TCT No. T-11839 to the properties to be sold at public auction, without prior notice to petitioners (defendants therein). The amendment was substantial because it included property which was not stated in the original decision; hence, the ninety-day period for petitioners to pay the judgment debt should be reckoned not from the date of service of the original decision but from the date of service of the amendment thereto. Consequently, plaintiff's motion for execution filed on May 3, 1975, or barely eleven days after the Order amending the decision, was premature inasmuch as the thirty-day reglementary period to appeal had not yet elapsed. More importantly, the lower court's Order dated June 30, 1975 for the issuance of a Writ of Execution was null and void, since this was done before the expiration of the ninety-day period for defendants to pay the judgment debt. Therefore, petitioners contend that they should be allowed another period of ninety (90) days within which to pay the judgment debt.

Petitioners further argue that the sale to private respondent of the lands, consisting of a total of 271.306 hectares, for the measly sum of P120,500.00, must be stricken down as null and void for being grossly inadequate and unconscionable as to shock the moral sense. Moreover, the inclusion at the auction sale of the property of Luis Bustillo, covered by TCT No. T-11337, was likewise null and void in view of the lower court's finding in its decision that "Luis Bustillo did not sign the promissory note and therefore should not be held liable for the same."^[16]

Likewise, petitioners assail the validity of the order of confirmation issued by the lower court for having been issued without affording them notice and hearing, as shown by the Certification of the Clerk of Court of the Regional Trial Court of Balayan, Batangas, dated March 11, 1999,^[17] to the effect that counsel for Napoleon S. Rosales was not furnished a copy of the Order of the court dated June 15, 1976. As mortgagors, they should have been afforded a hearing and an opportunity to show cause why the sale should not be confirmed, as by proof of irregularities therein or gross inadequacy of the price. The lack of such a notice vitiates the confirmation sale, which may be set aside anytime.

Finally, petitioners accused Consolidated Bank of laches and prescription for its failure to consolidate its title for twenty (20) years.

On January 6, 1999, the Court of Appeals dismissed the petition.^[18] Petitioners' motion for reconsideration was denied in its Resolution dated February 18, 1999.^[19] Hence, this petition for review.

In its comment,^[20] private respondent National Development Corporation, successor-in-interest of Continental Bank, maintained that Napoleon Rosales was duly notified of all Orders of the trial court. In fact, petitioners wrote several letters to private respondent wherein they requested that they be allowed to repurchase the properties, and that they failed to pay the real estate taxes on the lands or perform any act consistent with ownership thereof. Based on these, petitioners are estopped from claiming ownership over the properties

On August 25, 1999, the petition was given due course and the parties were required to submit their respective memoranda.^[21]

There is merit in the petition.

The Court of Appeals dismissed the petition for *certiorari* on the main ground that service on petitioners of the decision dated December 16, 1974 as well as the orders of the lower court were deemed completed; and that petitioners, by their subsequent acts, should be deemed to have constructive notice of the decision of the case *a quo*. However, the Court of Appeals failed to address petitioners' primary argument in their petition for *certiorari* - that the issuance of the writ of execution was null and void for failure to afford petitioners the full ninety-day period within which to pay the judgment debt and avoid the sale of their properties at public auction.

We agree with petitioners that their period of appeal and the ninety days grace period within which they could have paid the judgment debt should have been counted from service of the Order dated April 22, 1975, which substantially amended the decision. The amendatory Order added TCT No. T-11839 to the properties that were to be judicially foreclosed and sold at public auction in the event that defendants therein fail to pay the judgment debt within the ninety-day period.

As such, the period to appeal should be reckoned from service of the said amendatory Order. Where a judgment is amended, the date of the amendment should be considered the date of the decision in the computation of the period for perfecting the appeal.^[22] For all intents and purposes, the lower court rendered a new judgment from which the time to appeal must be reckoned.^[23]

In the case at bar, the records reflect that a copy of the amendatory Order was sent to defense counsel by registered mail on April 23, 1975. Assuming there was constructive notice, service thereof must have been deemed completed sometime thereafter. Consequently, the motion for execution filed by Continental Bank on May 3, 1975 was premature, inasmuch as it was still within the reglementary period for petitioners to appeal, which under the Rules in force at that time was fixed at thirty days.^[24]

(T)he rule is that a judgment may be modified prior to the perfection of the appeal while the lower court still has control over said judgment. In