

FIRST DIVISION

[G.R. No. 115068, November 28, 1996]

**FORTUNE MOTORS (PHILS.) INC., PETITIONER, VS.
METROPOLITAN BANK AND TRUST COMPANY, AND THE COURT
OF APPEALS, RESPONDENTS.**

D E C I S I O N

HERMOSISIMA, JR., J.:

Before us is a petition for review of the decision of the Court of Appeals in CA-G.R. CV No. 38340 entitled "Fortune Motors (Phils.) Inc., v. Metropolitan Bank and Trust Company et al."^[1] The appellate court's decision reversed the decision in Civil Case No. 89-5637 of Branch 150 of the Regional trial Court of Makati City.

It appears that Fortune Motors (Phils.) Inc. obtained the following loans from the Metropolitan Bank and Trust company: (1) P20 Million, on March 31, 1982; (2) P8 Million, on April 30, 1983; (3) P2,500,000.00, on June 8, 1983 and; (4) P3 Million, on August 16, 1983.

On January 6, 1984, respondent bank consolidated the loans of P8 Million and P3 Million into one promissory note, which amounted to P12,650,000.00. This included the interest that had accrued thereon in the amount of P1,650,000.00.

To secure the obligation in the total amount of P34,150,000.00, petitioner mortgaged certain real estate in favor of respondent bank.

Due to financial constraints, petitioner failed to pay the loan upon maturity. Consequently on May 25, 1984, respondent bank initiated extrajudicial foreclosure proceedings and in effect, foreclosed the real estate mortgage.

The extrajudicial foreclosure was actually conducted by Senior Deputy Sheriff Pablo Y. Sy who had sent copies of the Notice of Extrajudicial Sale to the opposing parties by registered mail. In accordance with law, he posted copies of the Notice of Sheriff's Sale at three conspicuous public places in Makati -- the office of the Sheriff, the Assessor's office and the Register of Deeds in Makati. He thereafter executed the Certificates of Posting on May 20, 1984. The said notice was in fact published on June 2, 9 and 16, 1984 in three issues of "The New Record." An affidavit of publication, dated June 19, 1984,^[2] was executed by Teddy F. Borres, publisher of the said newspaper.

Subsequently, the mortgaged property was sold at public auction for P47,899,264.91 to the mortgagee bank, the highest bidder.

Petitioner failed to redeem the mortgaged property within the one-year redemption period and so, the titles thereto were consolidated in the name of respondent bank

by which token the latter was entitled to the possession of the property mortgaged and, in fact possessed the same.

Petitioner then filed a complaint for the annulment of the extrajudicial foreclosure, which covered TCT Nos. 461087, 432685, 457590, 432684, S-54185, S-54186, S-54187, and S-54188.

On December 27, 1991, the trial court rendered judgment annulling the extrajudicial foreclosure of the mortgage.

On May 14, 1992, an appeal was interposed by the respondent to the Court of Appeals. Acting thereon, the Court of Appeals reversed the decision rendered by the lower court. Subsequently, the motion for Reconsideration filed by petitioner was denied on April 26, 1994.

Aggrieved by the decision rendered by the Court of appeals, petitioner appealed before this Court. On May 30, 1994, however, we issued a Resolution denying said petition. Hence, this motion for reconsideration.

Petitioner raises the following issues before us, to wit:

"I

THAT THE COURT OF APPEALS ERRED IN DECLARING THAT THE PUBLICATION OF THE NOTICE OF EXTRAJUDICIAL FORECLOSURE WAS VALID.^[3]

II

THAT THE RESPONDENT COURT OF APPEALS ERRED IN DECLARING THAT THE NOTICES OF EXTRAJUDICIAL FORECLOSURE, AND SALE WERE DULY RECEIVED BY THE PETITIONER.^[4]

III

THAT THE COURT OF APPEALS ERRED IN FAILING TO ADJUDGE THE IRREGULARITIES IN THE BIDDING, POSTING, PUBLICATION, AND THE SALE OF FORTUNE BUILDING.^[5]

IV

THAT THE RESPONDENT COURT OF APPEALS ERRED IN RENDERING A JUDGMENT BASED ON PRESUMPTION."^[6]

Petitioner contends that the newspaper "Daily Record"^[7] where the notice of extrajudicial foreclosure was published does not qualify as a newspaper of general circulation.

It further contends that the population that can be reached by the "Daily Record" is only .004% as its circulation in Makati in 1984, was 1000 to 1500 per week. Hence, it concludes that only 1648 out of a population of 412,069 were probable readers of

the "Daily Record," and that this is not the standard contemplated by law when it refers to a newspaper of general circulation.

In the case of Bonnevie v. Court of Appeals,^[8] we had already made a ruling on this point:

"The argument that the publication of the notice in the 'Luzon Weekly Courier' was not in accordance with law as said newspaper is not of general circulation must likewise be disregarded. The affidavit of publication, executed by the publisher, business/advertising manager of the Luzon Weekly Courier, states that it is 'a newspaper of general circulation in x x x Rizal; and that the notice of Sheriff's sale was published in said paper on June 30, July 7 and July 14, 1968.' This constitutes prima facie evidence of compliance with the requisite publication. (Sadang v. GSIS, 18 SCRA 491).

To be a newspaper of general circulation, it is enough that 'it is published for the dissemination of local news and general information; that it has a bona fide subscription list of paying subscribers; that it is published at regular intervals.' (Basa v. Mercado, 61 Phil. 632). The newspaper need not have the largest circulation so long as it is of general circulation. (Banta v. Pacheco, 74 Phil. 67)."

In the case at bench, there was sufficient compliance with the requirements of the law regarding publication of the notice in a newspaper of general circulation. This is evidenced by the affidavit of publication executed by the New Record's publisher, Teddy F. Borres, which stated that it is a newspaper edited in Manila and Quezon City and of general circulation in the cities of Manila, Quezon City et al., and in the Provinces of Rizal xxx, published every Saturday by the Daily Record, Inc. This was affirmed by Pedro Deyto, who was the executive editor of the said newspaper and who was a witness for petitioner. Deyto testified: a) that the New Record contains news; b) that it has subscribers from Metro Manila and from all over the Philippines; c) that it is published once a week or four times a month ; and d) that he had been connected with the said paper since 1958, an indication that the said newspaper had been in existence even before that year.^[9]

Another contention posited by petitioner is that the New Record is published and edited in Quezon City and not in Makati where the foreclosed property is situated, and that, when New Record's publisher enumerated the places where said newspaper is being circulated, Makati was not mentioned.

This contention of petitioner is untenable. In 1984, when the publisher's affidavit relied upon by petitioner was executed, Makati, Mandaluyong, San Juan, Parañaque et. al., were still part of the province of Rizal. Apparently, this is the reason why in the New Record's affidavit of publication executed by its publisher, the enumeration of the places where it was being circulated, only the cities of Manila, Quezon, Caloocan, Pasay, Tagaytay, et. al., were named. Furthermore, as aptly ratiocinated by the Court of Appeals:

"The application given by the trial court to the provisions of P.D. No. 1079 is, to our mind, too narrow and restricted and could not have been the intention of the said law. Were the interpretation of the trial court (sic)