

FIFTH DIVISION

[CA-G.R. CV NO. 96419, March 13, 2015]

BINARY SYSTEMS HOLDINGS, INC., PLAINTIFF-APPELLANT, VS. KEPPEL BANK PHILIPPINES, INC., THE REGISTER OF DEEDS OF MAKATI, ROWENA WILWAYCO, EARL M. REYNOLDS, GAUTTIER T. DUPAYA, CRISPIN ALDIOSA, SUSANA J. ORTIZ, AND DIVA G. DOMINGO, DEFENDANTS-APPELLEES.

DECISION

GARCIA-FERNANDEZ, J.:

This is an appeal by plaintiff-appellant from the decision of the Regional Trial Court of Makati City, Br. 143^[1] on August 20, 2010 which dismissed the complaint in Civil Case no. 01-1428.

The facts based on the record are as follows:

On March 31, 1999, Portal, Inc., represented by Benedicto A. Litonjua and Patrick A. Litonjua, entered into a loan agreement^[2] with defendant-appellee Keppel Bank Philippines, Inc. (Keppel), as evidenced by a promissory note^[3]. The principal loan was Twelve Million Pesos (Php12,000,000.00), due on March 31, 2006 and payable by installment. The loan was secured by a real estate mortgage^[4] between Binary Systems Holdings, Inc., represented by Patrick A. Litonjua and/or David C. Bernabe as mortgagors and Keppel as mortgagee covering two condominium units registered under Condominium Certificates of Title Nos. 34327^[5] and 51890^[6].

Portal, Inc. failed to pay the installment due despite demand^[7]; thus Keppel foreclosed the subject properties extrajudicially, with Keppel emerging as the winning bidder during the public auction on November 15, 2000, as evidenced by a certificate of sale^[8]. Neither plaintiff-appellant nor Portal, Inc. were able to redeem the properties, hence Keppel consolidated^[9] the titles in its name. Subsequently, the titles registered under plaintiff-appellant's name were cancelled and CCT Nos. 77331^[10] and 77332^[11] were issued under Keppel's name.

On March 9, 2001, Keppel filed a petition (re: issuance of writ of possession)^[12] docketed as LRC Case No. M-4139 with the Regional Trial Court of Makati, Br. 134 (RTC). Said court granted the petition and ordered the issuance of a writ of possession in Keppel's favor in the resolution dated May 8, 2001^[13]. Plaintiff-appellant moved^[14] to reconsider its resolution, but the motion for reconsideration was denied by the RTC in the order dated August 30, 2001^[15].

On September 24, 2001 plaintiff-appellant filed a complaint for annulment of extrajudicial sale plus damages with prayer for issuance of temporary restraining

order and preliminary injunction against pending sale of property^[16] against Keppel and the Register of Deeds of Makati, alleging that: Keppel foreclosed the properties without demand; that publication of the notice of sale was not complied with because the newspaper used, "The Aficionado," is not a newspaper of general circulation; that no notice of sale was sent to plaintiff-appellant's principal office at Mandaluyong City; that Keppel consolidated its title over the properties notwithstanding its agreement with Portal that the redemption period will be until November 27, 2001; and that the General Banking Act is unconstitutional since said law shortens the right of redemption given to juridical persons from one year to three months, thus impairing its right under the real estate mortgage. In its amended complaint^[17], plaintiff-appellants alleged that Attys. Gauttier Dupaya and Rowena Wilwayco were in bad faith for conducting the foreclosure of the mortgage and consolidation of the titles in Keppel's name.

The RTC issued a temporary restraining order in favor of plaintiff-appellant and set the hearing for the issuance a writ of preliminary injunction^[18]. After hearing and on November 5, 2001, the RTC denied plaintiff-appellant's prayer for the issuance of a writ of preliminary injunction^[19].

Keppel moved to dismiss the complaint^[20] and filed a manifestation and supplemental motion to dismiss^[21] and with motion to cite plaintiff's president, Antonio K. Litonjua and his counsel, Salvador T. Reyes, in contempt of court. The motions were denied by the RTC in an order dated February 8, 2002^[22] for lack of merit.

In their answer^[23], defendants-appellees claim that Keppel complied with the procedural and substantive requirements for foreclosure of the real estate mortgage; that there is no need to issue a demand letter considering that the promissory note and real estate mortgage provides that "(p)resentment, demand, notice of dishonor, protest or notice of any kind are hereby waived" and the promissory note includes an acceleration clause that would make the entire debt due and demandable without need of demand should Portal, Inc. default in its payment; that Keppel complied with the publication requirements under Act No. 3135 because "Aficionado" is a newspaper of general circulation, as evidenced by a certification^[24] from the Office of the Clerk of Court and Ex-officio Sheriff who certified that "Aficionado" is a newspaper of general circulation and has been accredited by the Executive Judge to participate in the raffle of legal and judicial notices every Friday of the week. Defendants-appellees contend that Keppel acted in good faith in dealing with the plaintiff-appellant considering that it has agreed to postpone the public auction several times in view of plaintiff-appellant's proposal to settle the loan^[25]; that Keppel has the right to consolidate its ownership over the properties because plaintiff-appellant failed to redeem with the period provided under the General Banking Act of 2000, as certified by the Office of the Clerk of Court and Ex-officio Sheriff^[26]; and that plaintiff-appellant cannot question the constitutionality of the General Banking Act of 2000 because the Supreme Court itself has already recognized the validity and constitutionality of said law.

On August 20, 2010, the RTC rendered the decision^[27] in favor of defendants-appellees holding that:

"After a careful study of the parties' opposing contentions, the Court rules that plaintiff failed to discharge its burden of establishing its case by preponderance of evidence.

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The plaintiff's evidence shows that defendants' demand letter for the payment of the subject obligation was not sent to its address as stated in the Mortgage Agreement which is at No. 370 Aglipay Street, Mandaluyong City. Despite this, however, plaintiff cannot validly disclaim want of notice prior to the foreclosure proceedings due to the following observations:

Plaintiff as can be readily seen from the Mortgage Agreement was assisted and represented during the taking of the loan by its President Patrick Lintonjua, who was then a resident of No. 222 of Atrium Building of Makati City. This address, incidentally, also appears as the same address where one of the mortgaged properties, a condominium unit under Certificate of Title No. 34327 was situated. The demand letter dated 20 July 1999 was likewise addressed and appears to have been received by Benedict Litonjua, the President of Portal, Inc., the sister company of plaintiff, which held office at 222 The Atrium of Makati Building, Makati Avenue, Makati City. Also, the same Patrick Litonjua who appears to have signed for Portal, Inc. in his capacity as an officer of the same corporation occupying then the position of "VP Finance." Thus, considering this appearance of interlocking set of officers between plaintiff and its sister corporation Portal, Inc., there is enough factual basis for the conclusion that plaintiff actually received the notice intended for it and its subsequent protestations of having been deprived of due process were merely feigned to avoid the effects of its clear default.

In any event, even if the Court is to indulge plaintiff's submission on the alleged lack of notice to it prior to the foreclosure of the subject properties, the effect of this deficiency is overridden If not negated by the express agreement of the parties as appearing in the Promissory Note, particularly paragraphs 6 and 10 thereof which reads, viz:

"6. In the event that this Note or any instalment or interest payable under this Note is not paid when due or when this Note is declared in default of the cases enumerated in paragraph hereof, the undersigned, without need of demand, shall pay the CREDITOR penalty equivalent to three percent per month of the amount due and unpaid or the whole sum remaining unpaid and declared due and demandable computed from the due date or date fully paid, in addition to interests and other charges.

10. Presentment, demand, notice of dishonor, protest or notice of any kind are hereby waived. *In case of judicial execution of this Note, the undersign xxx their rights under Rule 39, Section 13 of the Rules of Court."*

Also, it was stipulation of the parties as appearing in the Mortgage Agreement that:

"12. FORECLOSURE. Upon default of the MORTGAGOR/BORROWER as provided under paragraph 2 of this Agreement, the CREDITOR may immediately foreclose the mortgaged property either judicially under Rules of Court or extrajudicially under Act No. 3135, as amended, or under any applicable law, as the case may be. The MORTGAGOR/BORROWER shall, upon demand by the CREDITOR, turn over possession of the mortgaged property to the CREDITOR.

For the purpose of extrajudicial foreclosure, the MORTGAGOR/BORROWER hereby appoints the CREDITOR as its attorney-in-fact, with full power of substitution, to sell the mortgaged property or any portion thereof, in accordance with Act No. 3135, as amended, or under any applicable law as the case may be, to itself or other persons and other such terms or conditions the CREDITOR may deem fit and to sign all documents and perform any act requisite or necessary to accomplish said purpose.

In case of judicial foreclosure, the CREDITOR shall be entitled as of right, and the MORTGAGOR hereby consent, to the appointment of the CREDITOR, or any of its officers, or assigns, as receivers, without bond, to take charge of the mortgaged property and to hold possession of the same and of the reserves, earnings, rents, profits and other income thereof, with such powers as the court(s) making such appointment shall confer and to purchase the mortgaged property or any part thereof.

In addition to the remedies herein stipulated, the CREDITOR is hereby appointed attorney-in-fact of the MORTGAGOR/BORROWER, full owner of substitution to enter into and take actual possession of the mortgaged property without the necessity of an order of any court or any authority other than that herein granted; to lease the same for such rent as it may consider satisfactory; to collect rents; to eject tenants; to make repairs thereon for the MORTGAGOR'S account; to execute such contract of lease, sale or other agreements that may deemed convenient for the proper administration of the mortgaged property. The power herein granted shall not be reckoned during the effectivity of this Agreement and all acts that may be executed by the CREDITOR by virtue of said power are hereby deemed ratified."

Thus, from the foregoing, the sending of a notice of foreclosure to the plaintiff would be a surplusage. Plaintiff cannot now justifiable complain that it was deprived of its right to due process by simply claiming that

the notice was not sent to its address in Aglipay Street, Mandaluyong City. For aside the clear fact that there was no necessity in doing so, it can be reasonably deduced that plaintiff, based on the communications sent by defendant Keppel to the responsible officers of the former, was in fact aware of the impending foreclosure. Most significantly, personal notice to the debtor-mortgagor in case of extrajudicial foreclosure of real estate mortgage is not required by Act No. 3135 being merely the enforcement of the agreement of the parties to a contract.

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Plaintiff likewise asserts rather strongly that the publication of the auction sale was likewise irregular. To this it submits that the newspaper *Aficionado* could not be considered as a newspaper of general circulation thus running afoul with the legal provisions on notice prior to a public sale. This, too, unfortunately, is unmeritorious. No less than than plaintiff's witness, Perla Soriano who is the Manager of the said publication testified that *Aficionado* was accredited by the Executive Judge of the Makati Regional Trial Court as a newspaper of general circulation which could officially carry notices for publication. Moreover, a careful perusal of the defendant's documentary evidence, particularly Exhibits "9" and "11" debunk plaintiff's claim on this point. The said documents establish clearly the regularity of the foreclosure proceedings and the fact that the notice prior to the auction was carried out in a newspaper of general circulation.

The Court now tackles the perceived unconstitutionality of the application of Section 47 of the General Banking Act of 2000. Plaintiff posits that the passage of the questioned law which prescribes a shorter period for redeeming an encumbered property impairs its vested rights and that there is no justification for defendant bank to apply the same retroactively. This again is devoid of merit.

The attack against the said law is flawed both in substance and procedure. Firstly, it is basic that the presumption is always in favour of validity or constitutionality in the event that a particular law is assailed. That being the case, plaintiff has to clearly demonstrate why the law that it attacks suffers from the vice of invalidity. But aside from merely submitting in the main that its (plaintiff's) vested rights have been impaired by the subject law, it altogether glosses over the fact that the same was enacted largely as a measure to protect the banking industry; the same being unquestionably imbued with public interest. Needless to state, the paramount interest and inconvenience. It is true that statutes are prospective and not retroactive in their operation, they being the formulation of rules for the future and not the past. Hence, the legal maxim *lex de futuro, judex de praeterito* – the law provides for the future, the judge for the past, which is articulated in Article 4 of the Civil Code: "Laws shall have no retroactive effect, unless the contrary is provided." The reason for the rule is the tendency of retroactive legislation to be unjust and oppressive on account of its liability to unsettle vested rights or disturb the legal effects of prior transactions.