

TWENTY-SECOND DIVISION

[CA-G.R. CV NO. 02659-MIN, May 29, 2014]

**SPOUSES ROBERTO CAYUDOT AND DELIA CAYUDOT,
PLAINTIFFS-APPELLEES, VS. THE REGISTER OF DEEDS OF
TAGUM CITY AND FRANCISCO CANSANA, JR., DEFENDANTS-
APPELLANTS.**

DECISION

CAMELLO, J.:

The defendants-appellants seek the reversal of the Decision^[1] of 31 August 2011 of the Regional Trial Court in Civil Case No. 45-2004 entitled "*Spouses Roberto Cayudot and Delia Petalino v. Francisco Cansana, Jr. and the Register of Deeds of Tagum City.*"

On 4 August 2004 a complaint^[2] - for the declaration of nullity of promissory note, real estate mortgage, and extra-judicial foreclosure proceeding with damages ? was filed by the plaintiffs-appellees spouses Roberto Cayudot and Delia Petalino against defendants-appellants private defendant Francisco Cansana, Jr. and public defendants the Deputy Sheriff Jonathan B. Fajardo and Clerk of Court Giselle B. Gonzales-Talion.

On 8 March 2002, the Cayudots allegedly obtained a loan from Francisco in the amount of P150,000.00 with interest at 25% per annum.

A year later, on 8 March 2003, the Cayudots executed a notarized^[3] promissory note^[4] promising to pay Francisco the amount of P360,000.00 with a monthly interest rate at 7% within a period of six [6] months or until 8 September 2003. The promissory note provides that, in case of default, the unpaid interest would be compounded, that is, added to the balance of the principal amount, and which in turn would earn 3% interest.

On 19 March 2003, as security for the loan, the Cayudots drew a deed of real estate mortgage^[5] over a parcel of land covered by Transfer Certificate of Title [TCT] No. 164426^[6] located in Babak, Samal Island in favor of Francisco.

The Cayudots defaulted, prompting Francisco to institute extrajudicial foreclosure proceedings^[7] on the mortgaged property on 9 June 2004. The auction sale was set on 5 August 2004.^[8]

On 4 August 2004, the Cayudots filed the instant complaint^[9] to prevent the foreclosure and sale of the mortgaged property on the ground that the mortgage contract failed to embody the true and correct agreement between the parties. The Cayudots averred that they were duped into signing the contract, with the amount

of the loan and interest rate left blank, which Francisco filled in subsequently, all by himself.

The Cayudots further contend that the extrajudicial foreclosure proceedings cannot proceed since Francisco was not authorized by the contract to extrajudicially foreclose the property. The complaint was docketed as Civil Case No. 45-2004 and assigned to the Regional Trial Court [RTC] of Panabo City, Branch 4.

On 5 August 2004, the Cayudots filed their opposition to the extrajudicial foreclosure before the Office of the Provincial Sheriff and Clerk of Court.^[10]

Despite these filings, the public defendant sheriff proceeded with the scheduled auction sale on 5 August 2004 and sold to Francisco, as the highest bidder, the mortgaged property for P1,007,435.00.^[11]

On 6 August 2004, the Cayudots filed an amended complaint^[12] to reiterate their opposition against the foreclosure proceeding and auction sale on the ground that the foreclosure was null and void for being contrary to Act No. 3135^[13] as amended by Act No. 4118^[14] and Republic Act No. 3872^[15].

On 9 August 2004, the trial court issued a temporary restraining order.^[16] The application for preliminary injunction was heard on 25 August 2004.^[17]

On 27 September 2004, the trial court issued an order granting the writ of preliminary injunction conditioned upon plaintiffs posting of a bond in the amount of P1,000,000.00.^[18] The Cayudots filed a motion for reconsideration^[19] of the order arguing that the amount was excessive and unnecessary. The motion was denied.^[20]

On 15 July 2005, Francisco moved to register the certificate of sale because the Cayudots failed to post the P1,000,000.00 bond.^[21] The motion was granted in an order dated 9 May 2006.^[22]

On 13 August 2010, the Cayudots filed a second amended complaint^[23] to include reconveyance of the subject property and cancellation of title. This time, the complaint impleaded only Francisco and the office of the Register of Deeds of Tagum City.

On 31 August 2011, after trial, the lower court rendered a Decision^[24] declaring null and void the extrajudicial foreclosure proceedings, as well as the certificate of sale in favor of Francisco, and ordering the reconveyance of the property to the Cayudots. The dispositive reads as follows:

IN VIEW OF THE FOREGOING, judgment is hereby rendered as follows:

1. Declaring null and void and without effect the extrajudicial foreclosure conducted in EJP Case No. 18-2004 entitled "Cansana, Jr. v. Roberto and Delia Cayudot" and all proceedings had in connection thereto including but not limited to the issuance of the Certificate of Sale and its registration, the cancellation of TCT no. T-164426 and the corresponding issuance of TCT No. T-260660 in favor the defendant;

2. Ordering Spouses Roberto and Delia Cayudot to pay defendant Francisco Cansana, Jr. the amount of Php 150,000.00 plus interest thereon at the rate of 12% per annum reckoned from 8 March 2002 until the same is fully paid;
3. Ordering defendant Francisco Cansana, Jr. to reconvey the subject property to the spouses Roberto and Delia Cayudot; and
4. Dismissing for lack of factual and legal basis, the other claims of the parties.

Due to the invalid extrajudicial foreclosure proceeding conducted in EJP No. 18-2004 and the distinct possibility that similar deficient applications were likewise unlawfully given due course, let copy of this decision be furnished the Office of the Clerk of Court and Executive Judge for this matter to be appropriately acted upon and addressed.

No costs.

SO ORDERED.^[25]

Aggrieved, Francisco filed the instant appeal, where he assigned the following errors:

1. THE COURT A *QUO* GRAVELY ERRED IN GIVING CREDENCE TO PLAINTIFFS CLAIM THAT THE INTEREST ON THE LOAN EXTENDED BY THE DEFENDANT IS 25% PER ANNUM AS NOT 10% PER MONTH AS STIPULATED IN THE REAL ESTATE MORTGAGE AND THE PROMISSORY NOTE.
2. THE COURT A *QUO* GRAVELY ERRED IN NOT ADHERING TO WHAT IS AGREED AND STIPULATED IN THE PRE-TRIAL ORDER PARTICULARLY PARAGRAPH 5 AND 7 THEREOF.
3. THE COURT A *QUO* GRAVELY ERRED IN ORDERING THE CANCELLATION OF TCT No. 260660 IN THE DEFENDANT'S NAME REVERTING TO ROBERTO CAYUDOT, TCT NO. TCT NO. T-164426.^[26]

Notably, the only argument that Francisco pursues in this appeal is the rate of interest; he has become totally silent on his challenge against the extrajudicial sale. Francisco explained that what had been agreed upon was 10% per month, which is generally accepted in rural areas to speedily secure the release of a loan, and that the Cayudots' insistence that it was 25% per annum, without any evidence to substantiate such claim, will not prevail over a notarized deed, as well as the testimony of the Notary Public.

On their part, the Cayudots contend that the extrajudicial foreclosure proceeding and the sale of the property in question under the deed of real estate mortgage are null and void. They reasoned that the mortgage contract does not embody their true agreement for when they signed it, the space provided for the amount of the loan was left blank. They insist that the amount of the loan was for P150,000.00 at the rate of 25% per annum. Nevertheless, even if the trial court did not take into consideration the iniquitous interest, the foreclosure proceedings would still be a

nullity because no special power of attorney was attached to or incorporated in the deed authorizing the extrajudicial foreclosure of the mortgaged property.

The appeal is not meritorious.

The trial court declared the extrajudicial foreclosure of 5 August 2004 null and void, and rightly so, on the ground that the deed of real estate mortgage was without a special power of attorney inserted in or attached to it.

The complaint stemmed from an alleged irregular extrajudicial foreclosure of a real estate mortgage constituted on the property of the Cayudots. The Cayudots protested the sale on the ground that the real estate mortgage contract did not contain any stipulation giving the mortgagee the authority to foreclose the mortgage extrajudicially. The sale nevertheless proceeded as scheduled with the mortgagee as the highest bidder.

Proceedings for the extrajudicial foreclosure of real estate mortgage are specially governed by Act 3135,^[27] as amended by Act No. 4118. As the title itself suggests and under Section 1 of the Act, extrajudicial foreclosure sales are proper only when so provided under a special power inserted in or attached to the mortgage contract. Section 1 provides —

Section six of Act Numbered Thirty-one hundred and thirty-five, entitled "An Act to regulate the sale of property under special powers inserted in or annexed to real-estate mortgages," is hereby amended to read as follows:

SEC. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act.

Indeed, a reading of the Deed of Real Estate Mortgage in this case would show no special power authorizing Francisco as mortgagee to extrajudicially foreclose the mortgage in case the Cayudots defaulted in their loan obligation.

Moreover, in Administrative Order No. 3 series of 1984 (re: Procedure in Extrajudicial Foreclosure of Mortgage),^[28] it is the sheriff's duty to examine if the application for extrajudicial foreclosure of real estate mortgage has complied with the requirements under Section 4 of Act 3135, as amended. However, amendments had already been introduced to Administrative Order No. 3 by making it the specific duty of the Clerk of Court to examine applications for extrajudicial foreclosure of mortgages.^[29] The very recent amendment is now provided for in Circular No. 7-2002^[30] 13 issued on January 22, 2002 and which became effective on April 22, 2002. Sections 1 and 2(a) of said Circular specifically state that: