

SPECIAL NINETEENTH DIVISION

[CA-G.R. CEB-CV No. 02464, June 27, 2014]

**SPOUSES ULDARICO AND LILIA TAUY AND REGINA TAUY,^{*}
PLAINTIFFS-APPELLEES, VS. RURAL BANK OF KANANGA, LEYTE
INC. (PRESENTLY OPERATING UNDER THE NAME FIRST
INTERSTATE BANK), THRU ITS MANAGER, DEFENDANT-
APPELLANT.**

D E C I S I O N

LAGURA-YAP, J.:

This is an appeal on the Decision^[1] dated July 19, 2007 of the Regional Trial Court, Branch 12 of Ormoc City, in Civil Case No. 4052-0, the dispositive of which reads:

"WHEREFORE, judgment is rendered in favor of the plaintiffs and against defendant and hereby declares the nullity of the following:

- a. The foreclosure proceedings filed before the Regional Trial Court in Tacloban City;
- b. The auction sale conducted on July 31, 1997;
- c. The sale of the property to the defendant bank
- d. The Final Sale of the property in favor of the defendant bank;
- e. The Transfer Certificate of Title in the name of the Rural Bank of Kananga, (Leyte) Inc. (TCT No. T-31532); and
- f. The Tax Declaration of the same land (covered by TCT No. T-31532) in the name of the Rural Bank of Kananga, (Leyte) Inc.

SO ORDERED."

This case involves a parcel of land, denominated as Lot 11458-A, located in Poblacion, Kananga, Leyte, with an area of 3,288 square meters, covered by TCT No. T-9844 and registered under the name Iluminada O. Tauy, married to Felix Tauy.

On July 25, 1994, Iluminada Tauy and her husband Felix Tauy executed a Special Power of Attorney^[2] giving plaintiff Regina Tauy the power to obtain a loan from a banking institution and to use the subject lot as collateral. Regina Tauy is the granddaughter of Felix and Iluminada Tauy.

Plaintiff-appellee Regina Tauy applied for a loan in the amount of twenty-one

thousand two hundred forty pesos (P21,240.00) with defendant-appellant Rural Bank of Kananga (Leyte), Inc. She executed a Real Estate Mortgage^[3] on the land as security for the loan, which was dated August 3, 1994. The loan was granted on August 6, 1994. It was payable within 180 days or was due on February 2, 1995.^[4]

Meanwhile, Iluminada Tauy died on January 3, 1995 in Ormoc City.^[5] Her heirs did not execute any document to settle her estate.

On February 16, 1996, the original loan was restructured and/or extended and another Promissory Note^[6] was executed by Regina Tauy. The loan amount stated in the Promissory Note is Twenty Thousand Eight Hundred Eighty-Six Pesos (P20,886.00), to be paid in 180 days or was due on August 14, 1996.

On March 17, 1997, the defendant-appellant bank sent a demand letter^[7] addressed to Regina Tauy, informing her that the loan account has been overdue for seven months already. The letter stated that she still had "an outstanding principal amount of P20,886.00 excluding past due interest, penalties and other bank charges". On March 24, 1997, the defendant-appellant bank sent another letter^[8] to Regina Tauy. The letter stated that the defendant-appellant bank's internal auditors conducted a review of the loan and found that the true and correct amount of Regina Tauy's principal obligation at the time when the account was renewed or restructured on February 16, 1996, was Fifty Thousand Eight Hundred Sixteen Pesos and 49/100 (P50,816.49).

On April 8, 1997, Felix Tauy died.^[9] Likewise, his heirs did not execute any document to settle his estate.

On May 6, 1997, defendant-appellant bank filed a petition^[10] for *Extrajudicial Foreclosure of Real Estate Mortgage Under Act No. 3135, as amended* before Branches 6, 7, 8, 9 of the Regional Trial Court of Tacloban City. Thereafter, a Notice of Extrajudicial Sale^[11] was issued, wherein it stated that the sale of the subject property would be conducted on July 31, 1997. The said notice was posted on the bulletin boards of the Municipal Building and the public market in Kananga, Leyte, and the Regional Trial Court in Tacloban City on May 28, 1997.^[12]

During the auction sale held on July 31, 1997, the defendant bank, with a bid price of Three Hundred Thousand Pesos (P300,000.00)^[13], was awarded the subject land. Hence, a Sheriff's Certificate of Sale was issued on September 22, 1997. TCT No. T-9844, registered under the name of Iluminada Tauy married to Felix Tauy, was cancelled and TCT No. T-31532^[14] was issued to defendant-appellant Rural Bank of Kananga (Leyte), Inc. on February 12, 2001. The tax declaration under the name of Iluminada Tauy^[15] was cancelled and transferred under the name of defendant-appellant bank on February 21, 2001^[16].

Thereafter, the defendant-appellant bank sent a letter^[17] dated February 27, 2001, to Regina Tauy, Lilia Tauy and family, informing the latter that the former has decided to offer to sell the subject land to the latter and giving the latter thirty (30) days within which to buy the subject land. The letter was received by Lilia Tauy on March 1, 2001.

On February 11, 2002, the defendant-appellant bank filed a Petition for the *Issuance of a Writ of Possession*^[18] with the Regional Trial Court of Ormoc City.

Consequently, plaintiffs spouses Uldarico and Lilia Tauy and Regina Tauy filed a case for *Cancellation of Foreclosure of Mortgage, Annulment of Auction Sale, Annulment of final Sale, Annulment of TCT, Reversion to Former TCT, with prayer for Temporary Restraining Order and Preliminary Injunction* on February 18, 2002.

In their basic complaint, plaintiffs questioned the venue of the petition for the foreclosure proceedings as it was filed in Tacloban City; while the agreement between Regina and the bank in the promissory note is to file a case in the MTC of Kananga, Leyte or at the RTC of Ormoc City.

Plaintiffs claimed that when the loan was restructured in 1996 and another promissory note was signed; Iluminada Tauy was already deceased. The subject land is the paraphernal or exclusive property of Iluminada Tauy as she had inherited the subject land from her father. As Iluminada Tauy was already dead, Regina Tauy had no more power to encumber the subject land when she executed the second promissory note.

Further, plaintiffs argued that the extrajudicial foreclosure and sale should have been made under RA 720, as amended by RA 7353, and not under Act 3135, as amended, because defendant-appellant bank is a rural bank. Under RA 720, notices of foreclosure and execution of judgment should be posted in the most conspicuous area of the municipal building, municipal public market, the rural bank, the barangay hall and the barangay public market, if any, where the land is situated. The required posting of notices under Act 3135 was not even followed by the defendant-appellant bank, as it requires publication and posting of the notice in three public places of the municipality or city where the property is situated.

Defendant-appellant bank, on the other hand, asserted that rural banks are not precluded from availing of the procedures of Act 3135. Defendant-appellant bank maintained that the posting and publication requirements required by law were duly complied with. Defendant-appellant bank had no knowledge or information about the death of Iluminada Tauy. There was also no prior revocation of the special power of attorney that Iluminada Tauy and Felix Tauy executed in favor of Regina Tauy.

It is defendant-appellant bank's contention that in extrajudicial foreclosure of mortgage, personal notice to the mortgagor, much less to the unknown heirs, is not necessary for its validity. Moreover, the documents sought to be cancelled are all valid and binding. The proceedings conducted in relation thereto are likewise valid and binding. Plaintiffs are estopped from questioning the validity of the foreclosure and other proceedings as they had an undated letter^[19] written by Lilia Tauy which admitted the legality and validity of the proceedings.

While the case was pending, plaintiffs filed a Motion for Leave of Court to File Amended Complaint^[20] dated October 12, 2005 to include the other heirs of the late Iluminada Tauy as plaintiffs. Defendants did not file a comment to the motion; but instead, filed its Answer with Counterclaim^[21] on February 9, 2006.

On July 19, 2007, the Regional Trial Court, Branch 12 of Ormoc City, rendered a Decision^[22] in favor of the plaintiffs and against the defendants. The court *a quo* claimed that the bank failed to pursue the foreclosure proceedings against the proper party and failed to file a petition in the proper court. The court *a quo* said that the foreclosure proceedings was not filed under the proper law. The requirements of publication and posting of notices for extra-judicial foreclosure and sale of property were not also complied with.

Aggrieved, defendant filed a Notice of Appeal^[23] on August 15, 2007. In an Order^[24] dated August 21, 2007, the court *a quo* granted the notice of appeal and ordered the transmittal of the records of the case to this Court.

Meanwhile, plaintiffs filed a Motion for Partial Reconsideration^[25] praying that they be awarded moral and exemplary damages, attorney's fees and litigation expenses.

On October 22, 2007, the court *a quo* issued an Order^[26] denying plaintiffs' motion for lack of merit; however, the court *a quo* awarded nominal damages in the amount of Twenty Thousand Pesos (P20,000.00) to the plaintiffs. The court *a quo* then reiterated its order for the transmittal of the records of the case to this Court.

Defendant-appellant assigns the following as errors:

I

THE COURT COMMITTED ERROR WHEN IT DECLARED THAT THE EXTRA-JUDICIAL FORECLOSURE PROCEEDINGS SHOULD HAVE BEEN FILED AGAINST THE ESTATE OF THE LATE ILUMINADA TAUY.

II

THE COURT *A QUO* COMMITTED ERROR WHEN IT DECLARED THAT THE COURTS OF KANANGA AND ORMOC ALONE HAS THE EXCLUSIVE JURISDICTION TO PROCEED THE APPLICATION FOR THE EXTRA-JUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE AS STATED IN THE PROMISSORY NOTE AND REAL ESTATE MORTGAGE.

III

THE COURT *A QUO* COMMITTED ERROR WHEN IT DECLARED THAT REP ACT 7353 IS THE EXCLUSIVE LAW APPLICABLE FOR THE FORECLOSURE OF THE QUESTIONED REAL ESTATE MORTGAGE.

IV

THE COURT *A QUO* COMMITTED ERROR WHEN IT AWARDED PLAINTIFFS NOMINAL DAMAGES IN THE AMOUNT OF P20,000.00 IN ITS AMENDED DECISION WITHOUT BASIS.^[27]

This appeal should be denied.

On the first assigned error, defendant-appellant bank stated that the encumbrance

over the subject land made during the lifetime of Iluminada Tauy continues to stand and affect the hereditary rights of her heirs, even after she died. It argued that Regina Tauy is the proper party as she was the one who signed the real estate mortgage. Furthermore, there was no revocation of Regina Tauy's authority, nor was there a notice of Iluminada Tauy's death.

On the other hand, plaintiffs-appellees pointed out that Iluminada Tauy died on January 3, 1995 and that the extrajudicial foreclosure proceedings were effected after her death, that is, the public auction sale was made on July 31, 1997. Such extrajudicial foreclosure can only be prosecuted during the lifetime of Iluminada Tauy for the reason that this kind of foreclosure under Act No. 3135, as amended, is authorized by the special power of attorney inserted in the mortgage deed; and that said special power of attorney cannot extend beyond the lifetime of the supposed mortgagor.

Section 7, Rule 86 of the Rules of Court provides as follows:

"Sec. 7. Mortgage debt due from estate. — A creditor holding a claim against the deceased secured by mortgage or other collateral security, may abandon the security and prosecute claim in the manner provided in this rule, and share in the general distribution of the assets of the estate; or he may foreclose his mortgage or realize upon his security, by action in court, making the executor or administrator a party defendant, and if there is a judgment for a deficiency, after the sale of the mortgaged premises, or the property pledged, in the foreclosure or other proceeding to realize upon the security, he may claim his deficiency judgment in the manner provided in the preceding section; or he may rely upon his mortgage or other security alone, and foreclose the same at any time within the period of the statute of limitations, and in that event he shall not be admitted as a creditor, and shall receive no share in the distribution of the other assets of the estate; but nothing herein contained shall prohibit the executor or administrator from redeeming the property mortgaged or pledged, by paying the debt for which it is held as security, under the direction of the court, if the court shall adjudge it to be for the best interest of the estate that such redemption shall be made."

The foregoing provision of the Rules clearly recognizes three remedies that may be alternately availed of by the mortgagee in case the mortgagor dies, to wit:

- (1) to waive the mortgage and claim the entire debt from the estate of the mortgagor as an ordinary claim;
- (2) to foreclose the mortgage judicially and prove the deficiency as an ordinary claim; and;
- (3) to rely on the mortgage exclusively, or other security and foreclose the same at anytime, before it is barred by prescription, without the right to file a claim for any deficiency.

It follows that the mortgagee does not lose its right to extrajudicially foreclose the mortgage even after the death of the mortgagor as a third alternative under Section 7, Rule 86 of the Rules of Court. The right of the mortgagee bank to extrajudicially