

FIFTH DIVISION

[CA-G.R. CV No. 97507, November 21, 2014]

**SPOUSES PERCIVAL F. CRUZ AND LILIAN MATIC CRUZ,
PLAINTIFFS-APPELLANTS, VS. PHILIPPINE COMMERCIAL
INTERNATIONAL BANK (NOW KNOWN AS EQUITABLE PCI BANK)
AND ENGRACIO M. ESCASINAS, JR., IN HIS OFFICIAL CAPACITY
AS CLERK OF COURT VII AND EX-OFFICIO SHERIFF OF MAKATI
CITY, DEFENDANTS-APPELLEES.**

DECISION

CRUZ, J.:

THE CASE

This is an ordinary appeal under Rule 41 of the Rules of Court which seeks to reverse and set aside the June 27, 2011 Decision^[1] of the Regional Trial Court of Makati City, Branch 139 (RTC), in Civil Case No. 03-208, the dispositive portion of which reads:

WHEREFORE, premises considered, the instant Complaint as well as the Compulsory Counterclaims pleaded in the defendant's Answer with Counterclaims dated 02 July 2004 are hereby both dismissed for lack of merit.

xxx xxx xxx

SO ORDERED.^[2]

THE ANTECEDENTS

On February 21, 2003, Spouses Percival F. Cruz and Lilian Matic Cruz (Spouses Cruz), as plaintiffs, filed a Complaint^[3] for Annulment of Auction Sale and Damages against Philippine Commercial International Bank (now known as Equitable PCI Bank) and Engracio M. Escasinas, Jr., in his official capacity as Clerk of Court VII and Ex-Officio Sheriff of Makati City, with the Regional Trial Court of Makati City, docketed as Civil Case No. 03-208, which was raffled to Branch 139 of the said court.

The plaintiffs averred that they are the registered owners of a condominium property embraced by Condominium Certificate of Title No. 14077 issued by the Registry of Deeds for Makati City.^[4]

On September 14, 1994, as security for their loan in the principal amount of one

million pesos (P1,000,000.00), which the plaintiffs obtained from Defendant Philippine Commercial International Bank (PCI Bank), Spouses Cruz executed a Real Estate Mortgage in favor of the defendant bank covering the condominium property mentioned above. For alleged failure on the part of the plaintiffs to pay their mortgage indebtedness, purportedly in the aggregate amount of two million, six hundred fifty-two thousand, seven hundred fifteen pesos and 20/100 (P2,652,715.20) as of July 2002, PCI Bank, supposedly without the knowledge of the plaintiffs, filed a Petition for Extrajudicial Foreclosure of Real Estate Mortgage (Under Act No. 3135 as amended) before the Regional Trial Court of Makati City on July 9, 2002.^[5]

Atty. Engracio M. Escasinas, in his capacity as Clerk of Court VII and Ex-Officio Sheriff of Makati City, caused the preparation and sending of the Notice of Sheriff's Sale and the Certificate of Posting, and the publication of the Notice of Sheriff's Sale with *Tagalog Chronicle*. The Notice of Sheriff's Sale indicated that the auction sale of the property was on August 9, 2002 at 10:00 o'clock in the morning. The plaintiffs alleged that the Notice was improper, and the ensuing sale illegal, because the copy of the Notice was received by Spouses Cruz only on August 21, 2002, or thirteen (13) days after the auction was held and conducted by Sheriff Escasinas.^[6]

Spouses Cruz also argued that the newspaper *Tagalog Chronicle* was not qualified to publish the Notice of Sheriff's Sale for failure to comply with certain provisions of the Guidelines in the Accreditation of Newspapers and Periodicals and in the Distribution of Legal Notices and Advertisements for Publication issued by the Supreme Court. It is likewise the contention of the plaintiffs that the auction sale violated the Supreme Court-sanctioned Procedure in Extrajudicial Foreclosure of Mortgage. The plaintiffs pointed out the following alleged irregularities in the auction sale: (1) there was no valid and legal levy of the real estate mortgage filed by Ex-Officio Sheriff Escasinas with the Registry of Deeds of Makati City; (2) the bidding conducted was rigged because the bid submitted was not sealed and there was only one bidder, PCI Bank, which submitted an open letter of bid; (3) the verification/certification in the petition for foreclosure filed by PCI Bank was not in accordance with law; and (4) there was lack of notice to the plaintiffs of the entire proceedings. Spouses Cruz asserted that the Certificate of Sale under Foreclosure No. S-02-076 awarded to PCI Bank was a nullity for having been issued as a result of a patently illegal auction sale.^[7]

In addition, the plaintiffs emphasized that at the time of the foreclosure proceedings, they had already paid the defendant bank not less than one million, four hundred fifteen thousand, seven hundred thirty-three pesos and 14/100 (P1,415,733.14) for the principal loan obligation of P1,000,000.00 only. They repeatedly requested an accounting of the payments they have made to PCI Bank, but the latter did not accommodate their request.^[8]

Spouses Cruz prayed that the RTC: (1) declare the auction sale, including the Certificate of Sale, and all proceedings conducted by Sheriff Escasinas, null and void, and (2) order the defendants to pay damages, attorney's fees, litigation expenses and the costs of the suit.^[9]

In his Answer,^[10] Defendant Engracio M. Escasinas, Jr. (Sheriff Escasinas) stated that contrary to the plaintiffs' allegation, the Notice of Sheriff's Sale was sent

through registered mail on July 23, 2002 or fifteen (15) days prior to the scheduled auction sale to two given addresses of the plaintiffs. The Notice was sent to No. B4 Embassy Garden Homes, West Triangle, Quezon City. However, the plaintiffs were not found in this address as they had already moved out. The Notice was also sent to Rm. 205, 3rd Floor, 119 Rada St., Legaspi Village, Makati City. Sheriff Escasinas stressed that there was negligence on the part of the plaintiffs when they ignored the prior notice, and that it was incorrect for the plaintiffs to claim that they were not notified of the proceedings.^[11]

Sheriff Escasinas also refuted the plaintiffs' allegation that the newspaper *Tagalog Chronicle* was not qualified to publish the Notice of Sheriff's Sale. According to Sheriff Escasinas, *Tagalog Chronicle* was a newspaper of general circulation in the Metro Manila areas, and was duly accredited by the Executive Judge of the Regional Trial Court of Makati City to participate in the raffle for the publication of legal and judicial notices.^[12]

It was also the position of Sheriff Escasinas that legal levy of the property was not required because levy of real property applied only in execution sales and not in extrajudicial foreclosures. Sheriff Escasinas added that the posting of notices of the scheduled auction sale in three (3) public/conspicuous places served as invitation for interested parties to submit bids. Sheriff Escasinas insisted that the posting in these three (3) places also served as proper notice upon the plaintiffs as regards the scheduled auction sale. In support of this argument, Sheriff Escasinas cited Section 3 of Act No. 3135, as amended by Act No. 4118, which requires only the posting of the notice of sale in three public places and the publication of that notice in a newspaper of general circulation. Based on this same provision, Sheriff Escasinas posited that personal notice to the mortgagor is not necessary in extrajudicial foreclosure proceedings.^[13]

Sheriff Escasinas maintained that the conduct of the auction sale complied with all the formalities required by law. Hence, the auction, along with the corresponding Certificate of Sale issued thereafter, was perfectly valid.^[14]

The defendant bank filed an Answer with Counterclaims.^[15] At that point, the bank was known as Equitable PCI Bank, Inc. (Equitable PCI). Equitable PCI declared that all its acts were perfectly legal and done in good faith.^[16]

Specifically, Equitable PCI stated that it was implausible that the plaintiffs were not aware, or at least were not expecting, the foreclosure of the mortgaged property. Because they were not able to pay the mortgage indebtedness, they ought to have expected the foreclosure, as the Real Estate Mortgage signed by the parties explicitly provided that the bank had the option of foreclosing the mortgage extrajudicially. The plaintiffs could not legally evade their responsibility on the flimsy ground that they were allegedly not aware of the filing of the petition for extrajudicial foreclosure. Equitable PCI also narrated that a demand letter was sent to the plaintiffs in the months preceding the filing of the petition for foreclosure.^[17]

With respect to the plaintiffs' allegation that they received a copy of the notice of sale only after the auction had already taken place, Equitable PCI argued that even if this were assumed to be true, it was immaterial to the validity of the notice. The

defendant bank echoed the sheriff's contention that notice to the mortgagor was not necessary in extrajudicial foreclosure sales governed by Act No. 3135, as amended. The publication of the notice, according to Equitable PCI, operated as constructive notice to all of the scheduled foreclosure sale.^[18]

Equitable PCI posited that there was neither a requirement that there be a prior levy of the mortgaged property before it could be foreclosed nor one that stated that the bids submitted must be in sealed envelopes.^[19]

The defendant bank called attention to the vagueness of the plaintiffs' allegation that the verification/certification of the petition for foreclosure was not in accordance with law. The bank underscored that the plaintiffs did not clearly set out the alleged deviation from the rules.^[20]

Equitable PCI reiterated Sheriff Escasinas' assertion that *Tagalog Chronicle* was a newspaper of general circulation qualified and accredited to publish the notice of sale.^[21]

Finally, addressing the claim of payments made by the plaintiffs, Equitable PCI argued that the fact that the plaintiffs had made payments on the loan did not necessarily mean that their obligation under the mortgage had been extinguished. It explained that the payments were applied mainly to accrued interests and other charges, leaving a balance which remained due and demandable. At the time of the foreclosure of the real estate mortgage, the plaintiffs were in default in paying their loan.^[22]

Equitable PCI prayed that the plaintiffs' Complaint be dismissed and that they be ordered to pay damages, attorney's fees and the costs of the suit.^[23]

The case was set for mediation proceedings. However, no settlement was reached by the parties. Pre-trial was conducted where the RTC inquired into the possibility of settlement considering that there was an offer to settle from the plaintiffs. The defendants declined the offer. Trial on the merits ensued. After the presentation of evidence by both parties and the submission of their respective Memoranda, the case was submitted for decision on March 3, 2011.

The RTC rendered the assailed Decision on June 27, 2011. The plaintiffs' Complaint as well as the Compulsory Counterclaims pleaded in the defendant bank's Answer with Counterclaims were both dismissed for lack of merit.

The RTC held that the plaintiffs' contention that the belated notice to them of the auction sale was an irregularity which should invalidate the auction was devoid of merit.^[24] Citing *Philippine National Bank vs Rabat*,^[25] which referred to Section 3 of Act No. 3135, the RTC ruled that personal notice was not necessary in this case. The RTC's disquisition is quoted below:

The Act, therefore, requires (1) the posting of notices of sale in three public places, and (2) the publication of the same in a newspaper of general circulation. Personal notice, as stated, is not necessary. Thus, the belated receipt of the Notice of Sheriff's Sale does not invalidate the

auction sale as personal notice to the plaintiffs, in fact, is not required under the law.^[26]

Addressing the plaintiffs' allegation that *Tagalog Chronicle* was not a newspaper of general circulation, the RTC held that Spouses Cruz did not present any evidence to prove their allegation. In the absence of contrary evidence, the RTC gave credence to the Sworn Statement/Affidavit of Publication executed by the Manager/Publisher of said newspaper that *Tagalog Chronicle* was a newspaper of general circulation in the City of Makati. On the basis of the ruling in *China Banking Corporation vs Spouses Martir*,^[27] the RTC considered the affidavit of publication as *prima facie* proof that the newspaper was generally circulated in the place where the property was located.^[28]

The RTC also did not find any merit in the plaintiff's argument that the auction sale was rigged because there was only one bidder and the bid submitted was not sealed. Prescinding from the case of *Spouses Certeza vs Philippine Savings Bank*,^[29] the RTC explicated:

Thus, the two-bidder rule is no longer required in extrajudicial foreclosure sale and the subject auction sale cannot be invalidated on the basis of such ground.^[30]

Then, the RTC, passing upon the question of whether or not the bid submitted was sealed, continued:

Moreover, contrary to plaintiffs' allegation that there was an open bid, Sheriff Norberto Magsajo testified that the bid was accepted in their office sealed and that it was only opened by the records officer at 4:00 o'clock during the closing time of the said auction sale. Such statement, in the absence of contrary evidence, must be given due credence particularly in the light of the presumption of regularity accorded to official acts.^[31] (*Citation omitted*)

As to the alleged defect in the verification and certification against forum shopping, the RTC held that the Account Officer and Head of the Collection Department-Consumer Finance Division of the defendant bank had the authority to sign the verification and certification even without the submission of a written authority from the board.^[32] Invoking the pronouncement in *Cebu Metro Pharmacy, Inc. vs Euro-med Laboratories Philippines, Inc.*,^[33] the RTC observed that the signatory to the verification and certification, as Head of the Collection Department, was in a position to verify the truthfulness and correctness of the allegations in the petition. The RTC also noted that the Board of Directors of the defendant bank ratified the signatory's authority.^[34]

The RTC concluded that,