

## SECOND DIVISION

**[ G.R. No. 160046, November 27, 2009 ]**

**BANK OF THE PHILIPPINE ISLANDS (SUCCESSOR-IN-INTEREST  
OF CITYTRUST BANKING CORPORATION), PETITIONER, VS.  
EVANGELINE L. PUZON, RESPONDENT.**

### D E C I S I O N

**CARPIO, J.:**

#### The Case

This is a petition for review<sup>[1]</sup> of the Decision<sup>[2]</sup> dated 20 December 2002 and the Resolution dated 17 September 2003 of the Court of Appeals in CA-G.R. CV No. 68903.

#### The Facts

Respondent Evangeline L. Puzon (respondent) was the registered owner of a residential lot (property) covered by Transfer Certificate of Title No. 13517 (TCT No. 13517) and located at Ifugao Street, La Vista, Quezon City. In April 1990, respondent applied for a P4,200,000 loan from the Citytrust Banking Corporation (Citytrust). To secure the loan, respondent executed in favor of Citytrust a First Real Estate Mortgage<sup>[3]</sup> over the property and issued a promissory note<sup>[4]</sup> covering the amount of the loan. When respondent failed to pay her loan, Citytrust applied for extrajudicial foreclosure and a Notice of Sheriff's Sale was issued thereafter. The Notice of Sheriff's Sale dated 29 January 1992, scheduling the auction sale of the mortgaged property on 26 February 1992, was published in three consecutive issues of "The Guardian" newspaper for the weeks 1-7 February 1992, 8-14 February 1992, and 15-21 February 1992. The Sheriff issued a Certificate of Posting<sup>[5]</sup> dated 26 February 1992 stating that the Notice of Sheriff's Sale was posted in three conspicuous places in Quezon City.

During the auction sale on 26 February 1992, Citytrust Realty Corporation was declared the highest bidder and a certificate of sale was issued in its favor and registered with the Register of Deeds. Respondent failed to redeem the property and Citytrust Realty Corporation consolidated its title with the Register of Deeds. TCT No. 13517 was cancelled and replaced by Transfer Certificate of Title No. 95232 (TCT No. 95232) in the name of Citytrust Realty Corporation.

On 14 March 1994, respondent filed with the trial court a petition for annulment of the extrajudicial foreclosure. Respondent alleged that she was not in default because the mortgage account was not yet due and demandable at the time of foreclosure since no specific interest rate was agreed upon or fixed and no notice was sent to her after the lapse of the first interest term stipulated in the promissory note. Furthermore, respondent claimed that the sheriff who conducted the extrajudicial

foreclosure violated the provision on posting and publication of notice of sale and venue under Act No. 3135,<sup>[6]</sup> as amended by Act No. 4118. Besides, the notice of the sheriff's sale intended for respondent was sent to her office and not to her residence. Respondent also alleged that the extrajudicial foreclosure sale was held at the main entrance of the Regional Trial Court Offices at Vargas Building I and not at the Quezon City Hall.

Citytrust countered that respondent's account was already in default when the application to foreclose the mortgaged property was filed. Citytrust claimed that respondent was aware of the application for foreclosure and that she even requested for its postponement. Citytrust maintained that there was compliance with the requirements for the extrajudicial foreclosure proceedings and that respondent is barred by laches and estopped from questioning the validity of the foreclosure proceedings.

On 14 January 2000, the trial court rendered a decision, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered as follows:

- 1) Declaring as null and void the extrajudicial foreclosure sale of the property covered by Transfer Certificate of Title No. 13517 without prejudice to the foreclosure of the mortgage constituted thereon strictly in accordance with law, as well as the Sheriff's certificate of sale and Transfer Certificate of Title No. 95232 issued to Citytrust Realty Corporation pursuant thereto; and
- 2) Ordering the Register of Deeds to reinstate Transfer Certificate of Title No. 13517 in the name of petitioner [Evangeline L. Puzon] with force and effect as if not cancelled.

SO ORDERED.<sup>[7]</sup>

Citytrust moved for reconsideration, which the trial court denied in its Order dated 22 May 2000. Citytrust appealed to the Court of Appeals, which affirmed the trial court's decision. When the Court of Appeals denied its motion for reconsideration, Bank of Philippine Islands, as the successor-in-interest of Citytrust, filed this petition for review on certiorari.

### **The Trial Court's Ruling**

The trial court held that respondent defaulted on her mortgage obligation. The trial court found that the statement of account<sup>[8]</sup> as of 13 January 1992 shows that respondent was in arrears of her monthly amortizations from 20 October 1990 to 20 December 1991. Such failure was a violation of the terms and conditions stated on the promissory note, which caused the entire obligation secured by the mortgage to become immediately due, payable, and demandable, and entitled Citytrust to foreclose the mortgage in accordance with their stipulation in paragraph 9<sup>[9]</sup> of the First Real Estate Mortgage. Furthermore, the trial court noted that in her letter<sup>[10]</sup> dated 23 May 1991 addressed to the Vice President of Citytrust, respondent admitted her inability to pay her account with Citytrust.

However, the trial court held that the extrajudicial foreclosure sale of the property was void because respondent was not able to prove compliance with the requirements on posting and publication of notice of auction sale as provided under Act No. 3135 (Act 3135) and Presidential Decree No. 1079<sup>[11]</sup> (PD 1079).

### **The Court of Appeals' Ruling**

The Court of Appeals held that Citytrust had the right to foreclose the mortgage upon the property considering that respondent's obligation to Citytrust which was secured by the mortgage remained unsettled. However, the Court of Appeals affirmed the trial court's ruling that there was no valid extrajudicial foreclosure sale. The Court of Appeals noted that the Sheriff's Certificate of Posting stated that the Notice of Sheriff's Sale was posted in three "conspicuous places" in Quezon City and not in "public places" as required under the law. There was no proof that the conspicuous places where the notices of sale were posted were indeed public places as contemplated by law. Furthermore, it was not stated in the Sheriff's Certificate of Posting that the posting was made at least 20 days prior to the foreclosure sale as provided under Section 3 of Act 3135. Although the Court of Appeals agreed with Citytrust that "The Guardian," which published the auction sale, is a newspaper of general circulation, it however held that there was no proof that "The Guardian" was qualified to publish the auction sale in accordance with the provisions of PD 1079. The Court of Appeals held that statutory provisions governing the publication of notice of mortgage foreclosure sale must be strictly complied with and even slight deviations therefrom will invalidate the notice and render the sale at least voidable.

### **The Issues**

Petitioner raises the following issues:

1. WHETHER THE HONORABLE COURT OF APPEALS HAD DEPARTED FROM THE USUAL AND ACCEPTED COURSE OF JUDICIAL PROCEEDINGS, OR HAD SANCTIONED SUCH DEPARTURE BY THE TRIAL COURT, IN DECLARING AS NULL AND VOID THE SUBJECT FORECLOSURE SALE BASED ON MATTERS NOT RAISED AS ISSUES IN THE PLEADINGS, NOR PROVEN IN THE TRIAL;
2. WHETHER THE PRESUMPTION OF REGULARITY OF A FORECLOSURE SALE MAY BE OVERCOME BY IMPERFECTIONS IN THE MERE WORDINGS OF A CERTIFICATE OF POSTING WITHOUT EVIDENCE ALIUNDE;
3. WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ERRED AND DECIDED IN A MANNER CONTRARY TO JURISPRUDENCE WHEN IT DECLARED NULL AND VOID THE SUBJECT FORECLOSURE SALE SIMPLY BECAUSE: (1) THE CERTIFICATE OF POSTING IS WORDED IN THE "PAST TENSE"; (2) THE CERTIFICATE OF POSTING DOES NOT STATE THAT "IT WAS POSTED NOT LESS THAN TWENTY DAYS BEFORE THE AUCTION SALE"; (3) THE CERTIFICATE OF POSTING STATES MERELY THAT "IT WAS POSTED ONLY IN THREE CONSPICUOUS PLACES; AND (4) THERE IS NO PROOF THAT THE

NEWSPAPER THROUGH WHICH THE SHERIFF'S NOTICE OF SALE WAS PUBLISHED WAS ACCREDITED BY THE EXECUTIVE JUDGE;

4. WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ERRED AND DECIDED IN A MANNER CONTRARY TO JURISPRUDENCE IN NOT HOLDING THAT PUBLICATION ALONE IS SUFFICIENT COMPLIANCE WITH THE NOTICE-POSTING REQUIREMENT OF THE LAW IN ACCORDANCE WITH THE DECISIONS OF THIS HONORABLE COURT IN THE CASES OF OLIZON V. THE HONORABLE COURT OF APPEALS [236 SCRA 148] AND DEVELOPMENT BANK OF THE PHILIPPINES V. AGUIRRE [G.R. 144877, SEPTEMBER 7, 2001];
5. WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ERRED AND DECIDED IN A MANNER CONTRARY TO JURISPRUDENCE WHEN IT HELD THAT IT WAS STILL NECESSARY TO PROVE THE ACCREDITATION OF THE NEWSPAPER AND/OR RAFFLE THERETO OF THE SHERIFF'S NOTICE OF SALE IN THE ABSENCE OF ISSUE THEREON OR OF EVIDENCE TO THE CONTRARY;

WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ERRED AND DECIDED IN A MANNER CONTRARY TO JURISPRUDENCE IN NOT HOLDING THAT RESPONDENT'S ACT OF ASKING FOR EXTENSION OF THE PERIOD TO REDEEM HER MORTGAGED PROPERTY HAD ESTOPPED HER FROM QUESTIONING THE VALIDITY OF THE FORECLOSURE PROCEEDINGS IN ACCORDANCE WITH THE FINDINGS OF THIS HONORABLE COURT IN THE CASE OF VALMONTE ET AL. V. THE HONORABLE COURT OF APPEALS [G.R. NO. L-41621, FEBRUARY 18, 1999].<sup>[12]</sup>

### **The Ruling of the Court**

We find the petition meritorious.

The main issue in this case is whether there was compliance with the statutory requirements on posting and publication of notice of auction sale of the mortgaged property. We rule in the affirmative.

Respondent insists that the issues raised by petitioner are factual and therefore not proper subjects in a petition for review under Rule 45. Although Section 1 of Rule 45 states that the petition should raise only questions of law, this rule is subject to several exceptions as enumerated by this Court in *Royal Cargo Corporation v. DFS Sports Unlimited, Inc.*:<sup>[13]</sup>

The settled rule is that issues of fact are not proper subjects of a petition for review before this Court. Nonetheless, there are recognized exceptions to this rule, among which are: (1) **the conclusion is grounded on speculations, surmises or conjectures**; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of facts are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the finding of absence of facts is contradicted by the presence of evidence on record;

(8) the findings of the CA are contrary to the findings of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.<sup>[14]</sup> (Emphasis supplied)

We find that the conclusion of the trial court and the appellate court regarding petitioner's non-compliance with the statutory requirements on posting and publication of the auction sale is speculative. In concluding that the foreclosure sale was not valid, both the trial court and the appellate court disregarded petitioner's evidence and relied mainly on the wordings of the Sheriff's Certificate of Posting. For this reason, a review of this case is imperative.

The pertinent provisions of Act 3135 and PD 1079, regulating notice of auction sale and its posting and publication, read:

*Act 3135*

**SEC. 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city.**

*PD 1079*

**SECTION 1. All notices of auction sales in extrajudicial foreclosure of real estate mortgage under Act No. 3135 as amended, judicial notices such as notices of sale on execution of real properties, notices in special proceedings, court orders and summonses and all similar announcements arising from court litigation required by law to be published in a newspaper or periodical of general circulation in particular provinces and/or cities shall be published in newspapers or publications published, edited and circulated in the same city and/or province where the requirement of general circulation applies: *Provided*, That the province or city where the publication's principal office is located shall be considered the place where it is edited and published: *Provided, further*, That in the event there is no newspaper or periodical published in the locality, the same may be published in the newspaper or periodical published, edited and circulated in the nearest city or province: *Provided, finally*, That no newspaper or periodical which has not been authorized by law to publish and which has not been regularly published for at least one year before the date of publication of the notices or announcements which may be assigned to it shall be qualified to publish the said notices.**

**SEC. 2. The executive judge of the court of first instance shall designate a regular working day and a definite time each week during which the said judicial notices or advertisements shall be**