

THIRD DIVISION

[G.R. No. 222505, June 28, 2021]

**LOURDES C. AKIAPAT, BILLY CACHERO AND NOEL CACHERO,
PETITIONERS, VS. SUMMIT BANK (RURAL BANK OF TUBLAY
[BENGUET], INC.), RESPONDENT.**

[G.R. No. 222776, June 28, 2021]

**RICHARD CACHERO, JEANETTE C. GAMBOA AND TERESITA C.
MAINEM, PETITIONERS, VS. SUMMIT BANK (RURAL BANK OF
TUBLAY [BENGUET], INC.), RESPONDENT.**

D E C I S I O N

INTING, J.:

For consideration are two consolidated Petitions^[1] for R view on *Certiorari* assailing the Decision^[2] dated February 27, 2015 and the Resolution^[3] dated January 8, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 125707. The CA found grave abuse of discretion on the part of Branch 63, Regional Trial Court (RTC), La Trinidad, Benguet which directed Summit Bank [Rural Bank of Tublay [Benguet], Inc.] (Summit Bank) to reapply for an extrajudicial foreclosure of the real estate mortgage and exclude the *pro indiviso* shares of the third-party claimants, namely: Lourdes C. Akiapat (Lourdes), Billy Cachero (Billy), and Noel Cachero (Noel) (Lourdes, *et al.*).^[4]

The pertinent facts are as follows:

Domacia^[5] Galipen (Domacia), Renato Cachero (Renato), Richard Cachero (Richard), Teresita C. Mainem (Teresita), Jeanette C. Gamboa (Jeanette), and Lourdes, *et al.* were co-owners of a parcel of land covered by Transfer Certificate of Title (TCT)No. T-34811 (subject property).^[6]

In 1996 and 1997, Domacia, Renato, Richard, Teresita, and Jeanette (Domacia, *et al.*) executed Promissory Notes^[7] in favor of Summit Bank to cover their separate loans.^[8] As security of the loans, they executed a Real Estate Mortgage^[9] over the subject property. Meanwhile, Lourdes *et al.* (co-owners but non-borrowers) joined in executing the real estate mortgage.

*First foreclosure sale of
January 11, 2000*

Domacia, *et al.* failed to pay their loan obligations.^[10] Thus, on December 3, 1999, Summit Bank extrajudicially foreclosed the real estate mortgage. The foreclosure sale was held on January 11, 2000 wherein Summit Bank emerged as the winning bidder.^[11]

Domacia, *et al.* assert that Summit Bank had no basis to foreclose the real estate mortgage; thus they instituted an action for annulment and/or declaration of nullity of the loans, the real estate mortgage, and the foreclosure proceedings.^[12] The case was docketed as Civil Case No. 01-CV-1584 and raffled to Presiding Judge Agapito K. Laoagan of Branch 63, Regional Trial Court (RTC), La Trinidad, Benguet.^[13]

Ruling of the RTC

On September 17, 2007, the RTC rendered a Decision^[14] upholding the validity of the Real Estate Mortgage and Promissory Notes, but nullifying the December 3, 1999 extrajudicial foreclosure sale. The *fallo* of the Decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

1. Declaring the Real Estate of Mortgage executed by the plaintiffs dated December 27, 1996 as valid and binding;
2. Declaring the Promissory Notes individually executed by the plaintiffs dated December 24, 1996 and January 8, 1997 as valid and binding with the modification that the rate of penalty as well as the back charges be reduced from 9% to 3%;
3. Declaring the Promissory Notes individually executed by the plaintiffs dated December 24, 1997 and January 8, 1998 as valid and binding with a modification that [the] rate of interest be reduced from 28% to 17% per annum and the penalty be reduced from 18% to 3% per annum and the bank charges be reduced from 18% to 3% per annum. The renewal fee at 3% is hereby declared null and void.
4. Declaring the Foreclosure proceedings and the sheriff's Certificate of Sale null and void.
5. The defendant-bank is hereby ordered to make another accounting of the accounts of the plaintiffs based on the rates of interests of 17% per annum, penalties at 3% per annum and bank charges at 3% per annum to be computed from the date of the execution of the subject Promissory Notes dated December 24, 1996 and January 8, 1997.

No pronouncement as to the award of damages and cost of the suit.

SO ORDERED.^[15]

The RTC noted the following: except for their bare allegations, Domacia, *et al.* did not present any evidence to support their claim that at the time they signed the promissory notes, the [blank spaces] for the rate of interest, the penalty, and the bank charges were unfilled.^[16] Renato himself admitted that after they signed their respective promissory notes, Summit Bank furnished them separately with copies of

documents with the annual rate of interest, penalty, and bank charges already indicated; and Domacia, *et al.* did not object to the contents of the documents. Thus, all of them knew at the outset that they were bound by the interest, penalty, and the bank charges.^[17]

Nevertheless, the RTC sustained the assertion of Domacia, *et al.* that the increase in the rate of interest to 28% *per annum* on the restructured loans was confiscatory, inequitable, and excessive.^[18] Thus, it ruled for the nullification of the foreclosure proceedings, Sheriffs Certificate of Sale, the 18% increase on the annual penalty, bank charges, and the auction sale undertaken by the sheriff.^[19]

On August 17, 2009, after Summit filed a written manifestation agreeing to reduce the penalty, the RTC issued a Resolution^[20] confirming the indebtedness of Domacia, *et al.* in the amount of P28,508,425.50.^[21] The Resolution became final and executory on September 3, 2009.^[22]

Second Foreclosure Sale of May 12, 2010

Again, Summit Bank demanded payment from Domacia, *et al.*, but the latter failed to pay. Thus, Summit proceeded with a second foreclosure proceeding. On December 15, 2009, the RTC issued a writ of execution. On January 14, 2010, it annotated the notice of levy on TCT No. T-34811.^[23] Following the publication of the notice of sale, an auction sale over the subject property proceeded on May 12, 2010 with a final certificate of sale issued in the name of Summit Bank on May 26, 2011.^[24] In the process, TCT No. T-34811 was cancelled and TCT No. 016-2011001590^[25] was issued in lieu thereof. On September 29, 2011, the RTC issued a Writ of Possession^[26] in favor of Summit Bank.^[27]

The Third-Party Claim

In October 2011, Lourdes, *et al.* (the co-owners but non-borrowers) filed a Third-Party Affidavit of Claim or *Terceria*^[28] before the RTC alleging that their consent was not sought when they were impleaded as co-plaintiffs in Civil Case No. 01-CV-1584.^[29] Meanwhile, Renato, Richard, Teresita, and Jeanette filed an Entry of Appearance with Omnibus Motion^[30] for the annulment of: (1) the levy of the property covered by TCT No. T-34811 made on January 14, 2010; (2) the public auction sale held on May 12, 2010; (3) the sheriff's Certificate of Sale dated May 14, 2010; (4) the Sheriff's final certificate of sale dated May 26, 2011; and (5) the writ of possession dated September 29, 2011 on the ground that Lourdes, *et al.* had filed a third-party claim.^[31]

In the Resolution^[32] dated November 25, 2011, the RTC nullified (1) its previous Order dated November 10, 2009 granting Summit Bank's Motion for the Issuance of Writ of Execution; (2) the Writ of Execution dated December 15, 2009; and (3) the Writ of Possession dated September 29, 2011. It further directed Summit Bank to reapply for an extrajudicial foreclosure of the real estate mortgage but to exclude the *pro indiviso* shares of Lourdes *et al.* It adjudged as follows:

WHEREFORE, the Order dated November 10, 2009 granting the Motion for Issuance of Writ of Execution, the Writ of Execution dated December 15, 2009, the Order granting the Motion for Issuance of Deed of

Conveyance, as well as the Order for the Issuance of Writ of Possession and the Writ of Possession itself, dated September 29, 2011 and all other subsequent issuances are hereby recalled and set aside, for all being null and void.

As above stated, defendant Summit Bank is hereby directed to re-apply for an Extrajudicial Foreclosure of. the Real Estate Mortgage, pursuant to Act No. 3135, but should exclude the pro-indiviso shares of Lourdes C. Akiapat, Billy Cachero and Noel Cachero, of the subject parcel of land.

SO ORDERED.^[33]

Summit Bank moved for a reconsideration, but the RTC denied it in its Order^[34] dated March 16, 2012. It explained in this wise:

In its Resolution dated November 25, 2011, the Court ruled that since Lourdes, Hilly and Noel did not avail of or did not secure loans from Summit Bank, their share in the mortgaged property should be excluded from foreclosure. On this point, Summit Bank argues that a Real Estate Mortgage is one and indivisible. Hence, it is error on the part of this Court to order the exclusion of the pro indiviso shares of said Lourdes, Billy and Noel.

Resolving the Motion, it is still the firm opinion of this Court that it is more in accordance with justice and equity for Summit Bank to exclude the shares of Lourdes, Billy and Noel, by whatever means. If Summit Bank argues that the REM is indivisible, then they should buy out the pro-indiviso shares of Lourdes, Billy and Noel, then foreclose the remaining Real Estate Mortgage.

If the Court allow reconsideration as prayed for, then one who did not avail of loan services will be prejudiced and it is axiomatic that no one should be unjustly enriched, at the expense of another.

WHEREFORE, the Motion for Reconsideration is hereby denied. The second paragraph of the dispositive portion of the Resolution, dated November 25, 2011 is hereby affirmed.

SO ORDERED.^[35]

Aggrieved, Summit Bank elevated the matter to the CA by way of a Petition^[36] for *Certiorari* raising the sole issue of whether the RTC gravely abused its discretion in ordering the exclusion of the *pro indiviso* shares of Lourdes, *et al.* in the mortgaged property for the foreclosure proceedings.^[37]

The CA Ruling

In the Decision^[38] dated February 27, 2015, the CA granted the petition. It found that: *first*, the RTC erred in entertaining the third-party claim of Lourdes, *et al.*, emphasizing that the remedy of *terceria* is only available to a third person other than the judgment obligor or the latter's agent; *second*, the RTC cannot declare the *pro indiviso* shares of Lourdes, *et al.* to be excluded from the foreclosure proceedings sale as it would modify an earlier decision which had already attained finality; and *third*, by directing Summit Bank to reapply for an extrajudicial

foreclosure, the Resolution dated November 25, 2011 of the RTC effectively added a new directive to the final decision in Civil Case No. 01-CV-1584.^[39]

Petitioners filed their respective motions for reconsideration.^[40] The CA denied both in its Resolution dated January 8, 2016.

Hence, the consolidated petitions.

Lourdes, *et al.*, petitioners in G.R. No. 222505, averred that they belatedly filed their third-party claim as it was only after two years from the finality of the Decision in Civil Case No. 01-CV-1584 that they came to know that their *pro indiviso* shares in the subject property were included in the Sheriff's demand to vacate.^[41] They further averred that the act of the RTC in correcting or amending its own judgment was in harmony with justice and the facts of the case.^[42]

On the other hand, Richard, Jeanette, and Teresita, petitioners in G.R. No. 222776, explained: that the whole controversy stemmed from the first extrajudicial foreclosure sale held on January 11, 2000 which was declared null and void *per* RTC Decision dated September 17, 2007;^[43] that while the Decision sustained the validity of the real estate mortgage, it nonetheless nullified some of the charges imposed by the bank, the foreclosure proceeding, and the sheriffs certificate of sale;^[44] that after the decision, the parties reverted to their original situation prior to the foreclosure; that the option was once again opened to Summit Bank to either foreclose the mortgage or to recover the indebtedness by instituting an ordinary action;^[45] and that soon after, Summit Bank asked for the issuance of a writ of execution as if the decision sought to be enforced is one for collection of indebtedness.^[46] Thus, Richard, Jeanette and Teresita argued that the changes violated their right to due process.^[47]

In its Joint Comment,^[48] Summit Bank disclosed that after the RTC resolution confirming the indebtedness of Domacia, *et al.*, it again demanded payment from the petitioners.^[49] As no payment was made despite demand, it filed another petition for extrajudicial foreclosure against the mortgaged property.^[50] On March 12, 2012, the *ex-officio* sheriff issued a notice of public auction sale wherein Summit Bank became the highest bidder at the public auction held on April 10, 2012.^[51] On the basis thereof, Branch 63, RTC, La Trinidad, Benguet issued a Writ of Possession on January 17, 2013.^[52] The petitioners failed to redeem the subject property within the one year redemption period, and hence, a final certificate of sale was issued in its favor on April 23, 2013.^[53]

The Issue

In the main, the issue before the Court is whether the CA erred in granting Summit Bank's petition for *certiorari*.

Our Ruling

The petitions are without merit.

As mortgagors, the petitioners already lost all interests over the foreclosed property after the expiration of the redemption period. On the other hand, Summit Bank, as purchaser, became the absolute owner thereof when no redemption was made. As