

# FIRST DIVISION

[ G.R. No. 235260, August 27, 2020 ]

**THE COMMONER LENDING CORPORATION, REPRESENTED BY MA. NORY ALCALA, PETITIONER, VS. SPOUSES VOLTAIRE AND ELLA VILLANUEVA, RESPONDENTS.**

## R E S O L U T I O N

**LOPEZ, J.:**

The interpretation of the real estate mortgage contract is the main issue in this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Court of Appeals' (CA) Decision<sup>[1]</sup> dated March 27, 2017 in CA-G.R. CEB-CV No. 04387, which declared void the extrajudicial foreclosure sale.

### ANTECEDENTS

On August 13, 2002, Spouses Voltaire and Ella Villanueva borrowed P100,000.00 from The Commoner Lending Corporation (TCLC) payable within one year and with 24% interest *per annum*.<sup>[2]</sup> As security, Spouses Villanueva executed a real estate mortgage over Lot No. 380-D.<sup>[3]</sup> Thereafter, Spouses Villanueva paid TCLC a total of P82,680.00 but were unable to settle the balance of P41,340.00. Thus, TCLC sent a final demand letter. Yet, Spouses Villanueva failed to comply.<sup>[4]</sup>

Accordingly, TCLC applied with the Office of the Provincial Sheriff to foreclose the real estate mortgage.<sup>[5]</sup> After notice and publication, an auction sale<sup>[6]</sup> on December 7, 2004 was held and the mortgaged property was sold to TCLC as the sole bidder. On December 14, 2004, TCLC was issued a certificate of sale<sup>[7]</sup> which it recorded with the register of deeds.<sup>[8]</sup> On January 31, 2006, a final deed of sale was executed in favor of TCLC.<sup>[9]</sup>

Aggrieved, Spouses Villanueva filed an action against TCLC to annul the extrajudicial foreclosure sale, certificate of sale and final deed of sale before the Regional Trial Court (RTC) docketed as Civil Case No. 7823.<sup>[10]</sup> Spouses Villanueva alleged that TCLC had no right to foreclose the mortgaged property because paragraph 3 of the real estate mortgage did not expressly grant it the power to sell. Moreover, the mortgage transaction between the parties is void because it gave TCLC the power to possess the property without judicial order amounting to a *pactum commissorium* that is prohibited under the law. Lastly, Spouses Villanueva claimed that they learned the foreclosure only in January 2005. They denied receiving any notice of foreclosure and its publication.

On March 29, 2012, the RTC dismissed the complaint and upheld the validity of the extrajudicial foreclosure sale. Also, it ruled that the agreement between the parties

is not a *pactum commissorium* absent stipulation on automatic appropriation of the mortgaged property,<sup>[11]</sup> thus:

WHEREFORE, in view of foregoing, the instant case is ordered DISMISSED. The counterclaim for damages is likewise dismissed for lack of proof.

No cost.

SO ORDERED.<sup>[12]</sup>

Dissatisfied, Spouses Villanueva elevated the case to the CA docketed as CA-G.R. CEB-CV No. 04387. On March 27, 2017, the CA reversed the RTC's findings and declared void the extrajudicial foreclosure sale, certificate of sale and final deed of sale. It ruled that TCLC has no authority to foreclose the mortgage and that paragraph 3 of the real estate mortgage is merely an expression of Spouses Villanueva's amenability to an extrajudicial foreclosure sale. The contract did not grant TCLC the special power to sell the mortgaged property in a public auction,<sup>[13]</sup> to wit:

**WHEREFORE**, the appeal is GRANTED. The *Decision* dated March 29, 2012 of the RTC, 6<sup>th</sup> Judicial Region, Branch 6. Kalibo, Aklan in Civil Case No. 7823 is REVERSED and SET ASIDE. The extrajudicial foreclosure, *Certificate of Sale* and *Final Deed of Sale* issued thereunder are hereby declared NULL and VOID for lack of the special power or authority to sell the mortgaged property.

**SO ORDERED.**<sup>[14]</sup>

TCLC sought reconsideration but was denied.<sup>[15]</sup> Hence, this petition. TCLC maintains that paragraph 3 of the real estate mortgage provided the authority to foreclose the mortgage and sell the property to satisfy Spouses Villanueva's debt. Furthermore, Spouses Villanueva are already barred from questioning the extrajudicial proceedings because they failed to redeem the property within one year from the issuance of the certificate of sale. On the other hand, Spouses Villanueva insisted that TCLC was only granted the power to possess the property but not to foreclose the mortgage in case of non-payment of the loan.<sup>[16]</sup>

### **RULING**

It is settled that the literal meaning shall govern when the terms of a contract are clear and leave no doubt as to the intention of the parties.<sup>[17]</sup> The courts have no authority to alter the agreement or to make a new contract for the parties. Their duty is confined to the interpretation of the terms and conditions which the parties have made for themselves without regard to their wisdom or folly. The courts cannot supply material stipulations or read into the contract words which it does not contain. It is only when the contract is vague and ambiguous that the courts are permitted to interpret the agreement and determine the intention of the parties.<sup>[18]</sup> Here, the real estate mortgage contract is complete and leave no doubt as to the authority of TCLC to sell the mortgaged property.

Specifically, in extrajudicial foreclosure of real estate mortgage, a special power to sell the property is required which must be either inserted in or attached to the deed of mortgage. Apropos is Section 1 of Act No. 3135,<sup>[19]</sup> as amended by Act No. 4118,<sup>[20]</sup> thus:

Section 1. When a sale is made under a **special power inserted in or attached to any real estate mortgage** hereafter made as security for the payment of money or the fulfillment of any other obligation, the provisions of the following section shall govern as to the manner in which the sale and redemption shall be effected, whether or not provision for the same is made in the power. (Emphasis supplied.)

The special power or authority to sell finds support in civil law. Foremost, in extrajudicial foreclosure, the sale is made through the sheriff by the mortgagees acting as the agents of mortgagors-owners. Hence, there must be a written authority from the mortgagor-owners in favor of the mortgagees. Otherwise, the sale would be void.<sup>[21]</sup> Moreover, a special power of attorney is necessary before entering "*into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration.*"<sup>[22]</sup> Thus, the written authority must be a special power of attorney to sell.<sup>[23]</sup>

Here, it is undisputed that no special power to sell was attached to the real estate mortgage. TCLC relied on the express provision of paragraph 3 of the agreement allowing it "*to take any legal action as may be necessary to satisfy the mortgage debt.*" Yet, the CA construed the provision as a mere grant of authority to foreclose but not to sell the property. On this point, we find reversible error on the part of the appellate court.

Indeed, while it has been held that a power of sale will not be recognized as contained in mortgage unless it is given by express grant and in clear and explicit terms, and that there can be no implied power of sale where a mortgage holds by a deed absolute in form, it is generally held that no particular formality is required in the creation of the power of sale. Any words are sufficient which evince an intention that the sale may be made upon default or other contingency.<sup>[24]</sup> In this case, paragraph 3 of the real estate mortgage sufficiently incorporated the required special power of attorney to sell. It expressly provides that the mortgaged property shall be foreclosed, judicially or extra judicially, upon failure to satisfy the debt, and that TCLC, the mortgagee, is appointed as attorney-in-fact of Spouses Villanueva, the mortgagors, to do *any legal action as may be necessary to satisfy the mortgage debt*,<sup>[25]</sup> thus:

3. That in case of non-payment or violation of the terms of the mortgage or any of the provision of the Republic Act No. 728 as amended **this mortgage shall immediately be foreclosed judicially or extra-judicially as provided by law and the mortgagee is hereby appointed attorney-in-fact of the mortgagor(s) with full power and authority to take possession of the mortgaged properties** without the necessity of any judicial order or any other permission of power, and **to take any legal action as may be necessary to satisfy the mortgage debt**, but if the mortgagor(s) shall well and truly fulfill