

## **FIRST DIVISION**

**[ G.R. No. 192934, June 27, 2018 ]**

**SECURITY BANK CORPORATION, PETITIONER, V. SPOUSES  
RODRIGO AND ERLINDA MERCADO, RESPONDENTS.**

**[G.R. No. 197010, June 27, 2018]**

**SPOUSES RODRIGO AND ERLINDA MERCADO, PETITIONERS,  
SECURITY BANK AND TRUST COMPANY, RESPONDENT.**

### **D E C I S I O N**

**JARDELEZA, J.:**

These are consolidated petitions<sup>[1]</sup> seeking to nullify the Court of Appeals' (CA) July 19, 2010 Decision<sup>[2]</sup> and May 2, 2011 Resolution<sup>[3]</sup> in CA-G.R. CV No. 90031. The CA modified the February 26, 2007 Decision,<sup>[4]</sup> as amended by the June 19, 2007 Amendatory Order<sup>[5]</sup> (Amended Decision), of Branch 84, Regional Trial Court (RTC), Batangas City in the consolidated cases of Civil Case No. 5808 and LRC Case No. N-1685. The RTC nullified the extrajudicial foreclosure sales over petitioners-spouses Rodrigo and Erlinda Mercado's (spouses Mercado) properties, and the interest rates imposed by petitioner Security Bank Corporation (Security Bank).

On September 13, 1996, Security Bank granted spouses Mercado a revolving credit line in the amount of P1,000,000.00.<sup>[6]</sup> The terms and conditions of the revolving credit line agreement included the following stipulations:

7. Interest on Availments – I hereby agree to pay Security Bank interest on outstanding Availments at a per annum rate determined from time to time, by Security Bank and advised through my Statement of Account every month. I hereby agree that the basis for the determination of the interest rate by Security Bank on my outstanding Availments will be Security Bank's prevailing lending rate at the date of availment. I understand that the interest on each availment will be computed daily from date of availment until paid.

X X X X

17. Late Payment Charges – If my account is delinquent, I agree to pay Security Bank the payment penalty of 2% per month computed on the amount due and unpaid or in excess of my Credit Limit.<sup>[7]</sup>

On the other hand, the addendum to the revolving credit line agreement further provided that:

I hereby agree to pay Security Bank Corporation (SBC) interest on outstanding availments based on annual rate computed and billed

monthly by SBC on the basis of its prevailing monthly rate. It is understood that the annual rate shall in no case exceed the total monthly prevailing rate as computed by SBC. I hereby give my continuing consent without need of additional confirmation to the interests stipulated as computed by SBC. The interests shall be due on the first day of every month after date of availment. x x x<sup>[8]</sup>

To secure the credit line, the spouses Mercado executed a Real Estate Mortgage<sup>[9]</sup> in favor of Security Bank on July 3, 1996 over their properties covered by Transfer Certificate of Title (TCT) No. T-103519 (located in Lipa City, Batangas), and TCT No. T-89822 (located in San Jose, Batangas).<sup>[10]</sup> On September 13, 1996, the spouses Mercado executed another Real Estate Mortgage<sup>[11]</sup> in favor of Security Bank this time over their properties located in Batangas City, Batangas covered by TCT Nos. T-33150, T-34288, and T-34289 to secure an additional amount of P7,000,000.00 under the same revolving credit agreement.

Subsequently, the spouses Mercado defaulted in their payment under the revolving credit line agreement. Security Bank requested the spouses Mercado to update their account, and sent a final demand letter on March 31, 1999.<sup>[12]</sup> Thereafter, it filed a petition for extrajudicial foreclosure pursuant to Act No. 3135,<sup>[13]</sup> as amended, with the Office of the Clerk of Court and *Ex-Officio* Sheriff of the RTC of Lipa City with respect to the parcel of land situated in Lipa City. Security Bank likewise filed a similar petition with the Office of the Clerk of Court and *Ex-Officio* Sheriff of the RTC of Batangas City with respect to the parcels of land located in San Jose, Batangas and Batangas City.<sup>[14]</sup>

The respective notices of the foreclosure sales of the properties were published in newspapers of general circulation once a week for three consecutive weeks as required by Act No. 3135, as amended. However, the publication of the notices of the foreclosure of the properties in Batangas City and San Jose, Batangas contained errors with respect to their technical description. Security Bank caused the publication of an erratum in a newspaper to correct these errors. The corrections consist of the following: (1) TCT No. 33150 – "Lot 952-C-1" to "Lot 952-C-1-**B**;" and (2) TCT No. 89822 – "Lot 1931 Cadm- 164-D" to "Lot 1931 Cadm **4**64-D." The erratum was published only once, and did not correct the lack of indication of location in both cases.<sup>[15]</sup>

On October 19, 1999, the foreclosure sale of the parcel of land in Lipa City, Batangas was held wherein Security Bank was adjudged as the winning bidder. The Certificate of Sale<sup>[16]</sup> over it was issued on November 3, 1999. A similar foreclosure sale was conducted over the parcels of land in Batangas City and San Jose, Batangas where Security Bank was likewise adjudged as the winning bidder. The Certificate of Sale<sup>[17]</sup> over these properties was issued on October 29, 1999. Both Certificates of Sale were registered, respectively, with the Registry of Deeds of Lipa City on November 11, 1999 and the Registry of Deeds of Batangas City on November 17, 1999.<sup>[18]</sup>

On September 18, 2000, the spouses Mercado offered to redeem the foreclosed properties for P10,000,000.00. However, Security Bank allegedly refused the offer and made a counter-offer in the amount of P15,000,000.00.<sup>[19]</sup>

On November 8, 2000, the spouses Mercado filed a complaint for annulment of foreclosure sale, damages, injunction, specific performance, and accounting with application for temporary restraining order and/or preliminary injunction<sup>[20]</sup> with the RTC of Batangas City, docketed as Civil Case No. 5808 and eventually assigned to Branch 84.<sup>[21]</sup> In the complaint, the spouses Mercado averred that: (1) the parcel of land in San Jose, Batangas should not have been foreclosed together with the properties in Batangas City because they are covered by separate real estate mortgages; (2) the requirements of posting and publication of the notice under Act No. 3135, as amended, were not complied with; (3) Security Bank acted arbitrarily in disallowing the redemption of the foreclosed properties for P10,000,000.00; (4) the total price for all of the parcels of land only amounted to P4723,620.00; and (5) the interests and the penalties imposed by Security Bank on their obligations were iniquitous and unconscionable.<sup>[22]</sup>

Meanwhile, Security Bank, after having consolidated its titles to the foreclosed parcels of land, filed an *ex-parte* petition for issuance of a writ of possession<sup>[23]</sup> over the parcels of land located in Batangas City and San Jose, Batangas with the RTC of Batangas City on June 9, 2005. The case was docketed as LRC Case No. N-1685 and subsequently raffled to Branch 84 where Civil Case No. 5808 was pending.<sup>[24]</sup>

Thereafter, the two cases were consolidated before Branch 84 of the RTC of Batangas City.

In its February 26, 2007 Decision,<sup>[25]</sup> the RTC declared that: (1) the foreclosure sales of the five parcels of land void; (2) the interest rates contained in the revolving credit line agreement void for being potestative or solely based on the will of Security Bank; and (3) the sum of P8,000,000.00 as the true and correct obligation of the spouses Mercado to Security Bank.<sup>[26]</sup>

The RTC declared the foreclosure sales void because "[t]he act of making only one corrective publication x x x is a fatal omission committed by the mortgagee bank."<sup>[27]</sup> It also found merit in the spouses Mercado's contention that the parcel of land in San Jose, Batangas and the three parcels of land in Batangas City should not be lumped together in a single foreclosure sale. Not only does it make the redemption onerous, it further violates Sections 1 and 5 of Act No. 3135 which do not envision and permit a single sale of more than one real estate mortgage separately constituted. The notice of sale itself is also defective because the act of making only one corrective publication is fatal.<sup>[28]</sup>

The RTC also ruled that the stipulation as to the interest rate on the availments under the revolving credit line agreement "where the fixing of the interest rate is the sole prerogative of the creditor/mortgagee, belongs to the class of potestative condition which is null and void under [Article] 1308 of the New Civil [C]ode."<sup>[29]</sup> It also violates Central Bank Circular No. 1191 which requires the interest rate for each re-pricing period to be subject to a mutual agreement between the borrower and bank. As such, no interest has been expressly stipulated in writing as required under Article 1956 of the New Civil Code.<sup>[30]</sup> The RTC ruled that since the spouses Mercado offered to pay the higher amount of P10,000,000.00 and the bank unjustifiably refused to accept it, no interest shall be due and demandable after the offer.<sup>[31]</sup>

Security Bank moved for reconsideration of the RTCs Decision, claiming that the trial court: ( 1) does not have jurisdiction over the parcels of land in Lipa City, Batangas; and (2) erred in limiting the obligation to only P8,000,000.00.<sup>[32]</sup>

The RTC modified its Decision in an Amendatory Order<sup>[33]</sup> dated June 19, 2007 where it declared that: (1) only the foreclosure sales of the parcels of land in Batangas City and San Jose, Batangas are void as it has no jurisdiction over the properties in Lipa City, Batangas; (2) the obligation of the spouses Mercado is P7,500,000.00, after deducting P500,000.00 from the principal loan of P1,000,000.00; and (3) as "cost of money," the obligation shall bear the interest at the rate of 6% from the time of date of the Amendatory Order until fully paid.<sup>[34]</sup>

The CA, on appeal, affirmed with modifications the RTC Amended Decision. It agreed that the error in the technical description of the property rendered the notice of foreclosure sale defective. Security Bank's subsequent single publication of an erratum will not cure the defective notice; it is as if no valid publication of the notice of the foreclosure sale was made.<sup>[35]</sup> The CA also concluded that the provisos giving Security Bank the sole discretion to determine the annual interest rate is violative of the principle of mutuality of contracts because there is no reference rate from which to peg the annual interest rate to be imposed.<sup>[36]</sup>

The CA, however, disagreed with the trial court's findings as to the amount of the outstanding obligation, the imposition of interest, and the penalty. As to the principal amount of the obligation and the legal interest, it noted that the liability of the spouses Mercado from Security Bank is P7,516,880.00 or the principal obligation of P8,000,000.00 less the amount of P483,120.00 for which the Lipa City property has been sold.<sup>[37]</sup> It also modified the legal interest rate imposed from 6% to 12% from the date of extrajudicial demand, i.e., March 31, 1999.<sup>[38]</sup> Lastly, it imposed the stipulated 2% monthly penalty under the revolving credit line agreement.<sup>[39]</sup> Thus:

**WHEREFORE**, in view of the foregoing premises, the instant appeal is hereby **PARTIALLY GRANTED**. Accordingly, the assailed Decision dated February 26, 2007 and the Amendatory Order dated June 19, 2007 are hereby **MODIFIED**. [Spouses Mercado] are hereby ordered to pay [Security Bank] the sum of Seven Million Five Hundred Sixteen Thousand Eight Hundred Eighty Pesos (P7,516,880.00) with interest at the rate of twelve percent (12%) *per annum* from March 30, 1999, the date of extrajudicial demand, until fully paid. [Spouses Mercado] are further ordered to pay the stipulated penalty of two percent (2%) per month on the amount due in favor of Security Bank. The award of attorney's fees in favor of [spouses Mercado] is hereby deleted for lack of merit. All other dispositions of the trial court are hereby **AFFIRMED**.<sup>[40]</sup>

Hence, these consolidated petitions.

Security Bank argues that the CA erred in declaring: (1) the foreclosure sale invalid; and (2) the provisions on interest rate violative of the principle of mutuality of contracts. First, the foreclosure sale is valid because Security Bank complied with the publication requirements of Act No. 3135, as amended. The mistake in the original notice is inconsequential or minor since it only pertains to a letter and number in the technical description without actually affecting the actual size,

location, and/or description or title number of the property.<sup>[41]</sup> It invokes Office of the Court Administrator (OCA) Circular No. 14<sup>[42]</sup> issued on May 29, 1984 governing the format of sale which allegedly does not require that the complete technical description of the property be published.<sup>[43]</sup> *Second*, Security Bank insists that the provision on the interest rate observed the principle of mutuality of contracts. Absolute discretion on its part is wanting because a ceiling on the maximum applicable rate is found in the addendum. It is the market forces that dictate and establish the rate of interest to be applied and takes into account various factors such as but not limited to, Singapore Rate, London Rate, Inter-Bank Rate which serve as reference rates. This is acceptable, as held in *Polotan, Sr. v. Court of Appeals (Eleventh Division)*.<sup>[44]</sup> Further, the spouses Mercado are bound by the rate because they were aware of, and had freely and voluntarily assented to it.<sup>[45]</sup>

The spouses Mercado on the other hand, claim that the CA erred in imposing interest and penalty from the date of extrajudicial demand until finality of the Decision. Under the doctrine of operative facts laid down in *Spouses Caraig v. Alday*<sup>[46]</sup> and *Andal v. Philippine National Bank*,<sup>[47]</sup> the interest and penalty were considered paid by the auction sale.<sup>[48]</sup> As such, interest should only run from the finality of this Decision. They also assert that they should be excused from paying the penalty because of economic crises, and their lack of bad faith in this case.<sup>[49]</sup>

Initially, we denied the spouses Mercado's petition (G.R. No. 197010) in our Resolution<sup>[50]</sup> dated July 27, 2011. Upon the spouses Mercado's motion for reconsideration,<sup>[51]</sup> we reinstated the petition on April 18, 2012.<sup>[52]</sup>

The following issues are presented for this Court's resolution:

- I. Whether the foreclosure sales of the parcels of land in Batangas City and San Jose, Batangas are valid.
- II. Whether the provisions on interest rate in the revolving credit line agreement and its addendum are void for being violative of the principle of mutuality of contracts.
- III. Whether interest and penalty are due and demandable from date of auction sale until finality of the judgment declaring the foreclosure void under the doctrine of operative facts.

We deny the petitions.

## I

*The foreclosure sales of the properties in Batangas City and San Jose, Batangas are void for non-compliance with the publication requirement of the notice of sale.*

Act No. 3135, as amended, provides for the statutory requirements for a valid extrajudicial foreclosure sale. Among the requisites is a valid notice of sale. Section 3, as amended, requires that when the value of the property reaches a threshold, the notice of sale must be published once a week for at least three consecutive weeks in a newspaper of general circulation: