

# FIRST DIVISION

[ G.R. No. 201881, September 05, 2018 ]

**SPOUSES FLAVIO P. BAUTISTA AND ZENAIDA L. BAUTISTA,  
PETITIONERS, V. PREMIERE DEVELOPMENT BANK; AND ATTY.  
PACITA ARAOS, SENIOR ASSISTANT VICE PRESIDENT & ACTING  
HEAD OF LEGAL AND COLLECTION GROUP, PREMIERE  
DEVELOPMENT BANK, RESPONDENTS.**

## DECISION

**BERSAMIN, J.:**

The publication and posting of the notice of the *rescheduled* extrajudicial foreclosure sale are mandatory and jurisdictional. The ensuing foreclosure sale held without the publication and posting of the notice is void *ab initio*. This is because the requirements of publication and posting emanate from public policy considerations, and are not for the benefit of the parties to the mortgage.

### The Case

The petitioners assail the decision promulgated on January 27, 2012,<sup>[1]</sup> whereby the Court of Appeals (CA) affirmed the adverse judgment rendered in Civil Case No. 1792 on February 8, 2008 by the Regional Trial Court, Branch 77, in San Mateo, Rizal dismissing their complaint for the annulment of the extrajudicial foreclosure sale of their property.<sup>[2]</sup>

### Antecedents

The petitioners are the registered owners of the parcel of land located in Rodriguez, Montalban, Rizal, with an area of 1,248 square meters, and covered by Transfer Certificate of Title (TCT) No. 150668 of the Registry of Deeds of Marikina City.<sup>[3]</sup>

On January 7, 1994, the petitioners obtained a loan of P500,000.00 from respondent Premiere Development Bank (Premiere Bank) for which they executed the corresponding promissory note. To secure the performance of their obligation, they also executed a real estate mortgage over the abovestated parcel of land and its improvements.<sup>[4]</sup> The loan agreement stipulated that the obligation would be payable in three years through monthly amortizations of P20,412.51, subject to interest and penalty charges as follows:

(a) Floating rate renewable monthly with an initial interest rate of 27% per annum;

(b) In addition to the aforesaid stipulated interest, penalty charges of 24% per annum on any unpaid principal/amortization/installment/interest/advances and other charges due to be computed from date of default until full payment of obligation;

(c) Penalty in the amount equivalent to 3% of the outstanding balance of the loan if said loan is pre-terminated or paid before maturity date.<sup>[5]</sup>

Premiere Bank collected the monthly amortizations by debiting the same from the petitioners' savings account.<sup>[6]</sup>

For failure of the petitioners to settle their obligation in full, the sheriff sent the first notice of extrajudicial foreclosure sale to them on October 17, 1995, informing that the mortgaged property would be sold in a public sale to be conducted on November 17, 1995.<sup>[7]</sup> The petitioners requested the postponement of the scheduled sale as well as a detailed computation of their outstanding obligations several times, as borne out by the exchange of letters between them and Premiere Bank.<sup>[8]</sup>

On December 6, 2001, the sheriff prepared sent notice of the extrajudicial foreclosure sale to be held on January 15, 2002.<sup>[9]</sup> The notice was published in *The Challenger News*, a newspaper of general circulation in the Province of Rizal, in the issues of December 10, 17, and 24, 2001.<sup>[10]</sup> The sheriff posted the notice of the sale in public places within San Mateo, Rizal and in the place where the property was located. However, the sale did not push through as scheduled because the representative of Premiere Bank did not appear, and was rescheduled to February 18, 2002.<sup>[11]</sup>

Although no publication and posting of the notice of the rescheduled date of February 18, 2002 were made thereafter,<sup>[12]</sup> the sheriff conducted the foreclosure sale on February 18, 2002, and struck off the property of the petitioners to Premiere Bank as the lone bidder.<sup>[13]</sup> The sheriff issued the certificate of sale in the name of Premiere Bank, and the same was annotated on the original copy of TCT No. 150668 on November 7, 2002. The statement of account indicated that the petitioners' outstanding obligation totalled P2,062,254.26 as of February 18, 2002.<sup>[14]</sup>

The petitioners redeemed the property within the required period by tendering the amount of P401,820.00.<sup>[15]</sup> The sheriff issued the certificate of redemption in their name, but Premiere Bank refused to accept the redemption price because their total unpaid outstanding obligation had accumulated to P2,062,254.26. Premiere Bank then consolidated its ownership, and the Register of Deeds of Marikina City issued TCT No. 452198 in the name of Premiere Bank.<sup>[16]</sup>

### **Judgment of the RTC**

On November 6, 2003, the petitioners sued the respondents in the RTC to seek the annulment of the sheriff's foreclosure sale held on February 18, 2002 on the ground of the failure of the respondents to comply with the mandatory and jurisdictional requirements of publication and posting of the notice of sale in accordance with Act No. 3135 (docketed as Civil Case No. 1792).<sup>[17]</sup> They also prayed that the RTC should order the determination of the correct and lawful interest and penalty charges due from them.

On February 8, 2008, the RTC rendered judgment dismissing the petitioners' complaint.<sup>[18]</sup>

In upholding the extrajudicial foreclosure sale despite the lack of publication and posting of the notice of the public sale held on February 18, 2002, the RTC

observed:

While it is true that there was no republication and reposting of the notice of the auction sale held on 18 February 2002, wherein the subject property was awarded to the lone bidder, defendant Premiere Development Bank, Inc., it appears that plaintiffs-mortgagors voluntarily waived the same when they asked for a series of postponement as shown by a number of letters by petitioner-mortgagor Flavio Bautista.<sup>[19]</sup>

The RTC considered the petitioners estopped from assailing the validity of the foreclosure sale, stating that:

Moreover, considering that plaintiffs tried to redeem the property in the amount of P401,820.00, which is way below the amount of their outstanding obligation, they are estopped from questioning the validity of the auction sale and cannot now claim that there were irregularities in the conduct of the same.<sup>[20]</sup>

The RTC declared that the imposition of onerous and exorbitant interests and penalty charges did not occur considering that the parties had mutually agreed on the payment of interest and penalties; and that they had also freely stipulated on the interest rate to be floating and reviewable monthly.<sup>[21]</sup>

### **Decision of the CA**

The petitioners appealed, asserting that the RTC had gravely erred, viz: (1) when it did not declare as null and void the extrajudicial foreclosure sale held on February 18, 2002 despite the non-compliance with the mandatory requirements of publication and posting of the notice of the rescheduled sale; (2) in ruling that they had waived the mandatory requirements by seeking a series of postponements of the sale; (3) in holding that they were estopped from assailing the sale by their effort to redeem the property; (4) in finding that they had not fully settled their obligation, and in giving due weight and credit to the computation sheets belatedly prepared by Premiere Bank; (5) in refusing to rule on Premiere Bank's violation of the *Truth in Lending Act*; (6) in not declaring that a valid redemption had been made; and (7) in declaring that they had not proved their cause of action.<sup>[22]</sup>

On January 27, 2012, the CA promulgated the assailed decision,<sup>[23]</sup> affirming the validity of the February 18, 2002 foreclosure sale despite the non-posting and non-publication of the notice of the rescheduled sale.<sup>[24]</sup> It stated that the petitioners were estopped from challenging the validity of the extrajudicial proceedings because they did not seek judicial relief therefrom, and because they redeemed the foreclosed property and tendered the redemption price without any condition or reservation.<sup>[25]</sup> It upheld the interests and penalty charges imposed on the petitioners because "the *Promissory Note* explicitly provides for the imposition of interest, penalties and other charges in case appellants failed or defaulted in their loan obligation."<sup>[26]</sup> It found that no irregularities had attended the loan transaction between the parties, to wit:

In the case at bar, there is no showing that there were irregularities in the (appellants') loan transactions with the bank. The parties in this case as evidenced by the Promissory Note and other loan documents *have*

*mutually agreed to the payment of interest, past due interest and penalties in case the borrowers defaulted to pay their loan obligation on the stipulated date. It is likewise stipulated therein that the interest rate is floating and reviewable monthly.* Considering that the (appellants) defaulted in their monthly amortization, their subsequent payments shall be first applied on the accrued interest and penalties and thereafter to the principal loan. If the debt produces interest, payment of the principal shall not be deemed to have been made until the interest have been covered (Art 1253 of the New Civil Code). x x x *(Appellants) have agreed with the (appellee) that the interest rate was subject to a possible escalation or deescalation without advanced notice to them in the event the law or the Monetary Board prescribed a change in the interest rate.*

[27]

The petitioners moved for reconsideration, but the CA denied their motion on May 9, 2012 because it had already passed upon. [28]

### **Issues**

The issues being now presented by the petitioners for our consideration and resolution can be stated as follows:

1. Whether or not the CA erred in declaring that the extrajudicial foreclosure sale was valid despite the failure to publish and post the notice of the rescheduled foreclosure sale;
2. Whether or not the petitioners were estopped from impugning the foreclosure sale by their effort to redeem the property; and
3. Whether or not the loan obligation had already been fully settled by the petitioners.

### **Ruling of the Court**

The appeal is partly meritorious.

#### **1.**

#### **The extrajudicial foreclosure sale held on February 18, 2002 was void *ab initio***

Act No. 3135 [29] prescribes the requirements of posting and publication of the notice for the extrajudicial foreclosure sale. The law specifically mandates the publication of the notice in a newspaper of general circulation for at least three consecutive weeks if the value of the property is more than P400,000.00. Its Section 3 states:

Section 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 the city.** [Bold underscoring supplied for emphasis]