

## THIRD DIVISION

[ G.R. No. 200553, December 10, 2018 ]

**SPOUSES GILDARDO C. LOQUELLANO AND ROSALINA JULIET B. LOQUELLANO, PETITIONERS, VS. HONGKONG AND SHANGHAI BANKING CORPORATION, LTD., HONGKONG AND SHANGHAI BANKING CORPORATION-STAFF RETIREMENT PLAN AND MANUEL ESTACION, RESPONDENTS.**

### D E C I S I O N

**PERALTA, J.:**

Assailed in this petition for review on *certiorari* are the Decision<sup>[1]</sup> dated August 11, 2011 and the Resolution<sup>[2]</sup> dated February 1, 2012 of the Court of Appeals in CA-GR. CV No. 86805.

Petitioner Rosalina Juliet Loquellano used to be a regular employee in the Financial Central Department of respondent Hongkong and Shanghai Banking Corporation, Ltd. (*respondent bank*). As such, she became an automatic member of respondent Hongkong and Shanghai Banking Corporation - Staff Retirement Plan (*HSBC-SRP*) that provides retirement, disability and loan benefits to the bank's employees. In 1988, petitioner Rosalina applied with respondent HSBC-SRP a housing loan in the amount of P400,000.00 payable in twenty-five (25) years at six percent (6%) per annum, through monthly salary deduction from petitioner Rosalina's salary savings account with respondent HSBC.<sup>[3]</sup> It was provided in the loan application that the loan was secured by setting-off petitioner Rosalina's retirement benefits and chattel mortgage.<sup>[4]</sup> She executed a promissory note<sup>[5]</sup> for the payment of the said loan.

On September 5, 1990, petitioners spouses Gildardo and Rosalina Loquellano and Manuel S. Estacion, the managing trustee for and in behalf of the respondent HSBC-SRP, entered into a contract<sup>[6]</sup> of real estate mortgage wherein petitioners constituted a mortgage over their house and lot covered by TCT No. 95422 (44867) of the Register of Deeds of Pasay City to secure the payment of their housing loan. Petitioner Rosalina had been religiously paying the monthly installments and interests due on the housing loan through automatic salary deductions.

Subsequently, a labor dispute arose between the respondent bank and the bank union, to which petitioner Rosalina was a member, which culminated in a strike staged on December 22, 1993. Petitioner Rosalina, together with other bank employees, were dismissed from the service for abandonment, among others. Petitioner Rosalina and the other dismissed employees filed with the Labor Arbiter (*LA*) an illegal dismissal case against the respondent bank. The *LA* declared the strike illegal and dismissed the complaint. The labor case had reached us through a petition for review on *certiorari* filed by the dismissed concerned employees and had already been decided<sup>[7]</sup> by us on January 11, 2016. While we declared the strike

illegal, we also held that the mere finding of such did not justify the wholesale termination of the strikers from their employment. We found that there was illegal dismissal and ordered the bank, among others, to pay the backwages and separation pay of the 18 employees named in the decision, which included petitioner Rosalina, in lieu of reinstatement.

In the meantime, due to petitioner Rosalina's termination from employment with the bank on December 27, 1993, petitioners were unable to make any payments of the amortizations due in Rosalina's salary savings account beginning January 1994. Respondent HSBC-SRP sent demand letters dated June 13, 1994<sup>[8]</sup> and November 28, 1994,<sup>[9]</sup> respectively, to petitioner Rosalina for the payment of her outstanding obligation in full. Petitioner Rosalina offered to make partial payment of her housing loan arrears in the amount of P69,205.99,<sup>[10]</sup> which respondent HSBC-SRP rejected.<sup>[11]</sup>

Subsequently, petitioner Rosalina received an Installment Due Reminder<sup>[12]</sup> dated July 26, 1995 issued by respondent HSBC-SRP on her housing loan, wherein it was shown that the monthly installment overdue, the interest overdue and the interest accrued on the overdue installment amounted to P55,681.85 and the outstanding loan balance was P315,958.00. On August 11, 1995, petitioner Rosalina, through her salary savings account which was still existing, deposited the payments for all her monthly installment arrears and interests, and penalties from January 1994 up to August 1995. Respondent bank accepted the payments and credited them to her housing loan account.<sup>[13]</sup> Thereafter, petitioner Rosalina received an Installment Due Reminder<sup>[14]</sup> dated August 28, 1995, wherein it already reflected the payments she had made as her outstanding housing loan obligation was already reduced to P289,945.00.

In a letter<sup>[15]</sup> dated September 25, 1995 to petitioner Rosalina, respondent HSBC-SRP demanded for the payment of the entire housing loan obligation in the amount of P289,945.00. Notwithstanding, petitioner Rosalina received an Installment Due Reminder<sup>[16]</sup> dated September 27, 1995, reflecting the then current monthly installment and interest due thereon. Petitioner Rosalina, subsequently, received more installment due reminders showing a reduction in the outstanding balance of her housing loan.<sup>[17]</sup> She continuously made deposits to her salary savings account with the respondent bank for the payment of her monthly amortizations. Respondent bank debited petitioner Rosalina's savings account<sup>[18]</sup> and credited the payments to the balance of the installment and the interest due on the housing loan up to June 1996.<sup>[19]</sup>

On May 20, 1996, petitioners' mortgaged property was extrajudicially foreclosed by respondent HSBC-SRP and was sold at public auction for the amount of P324,119.59, with respondent Manuel S. Estacion as the highest bidder. A Certificate of Sale dated June 5, 1996 was issued.

On August 22, 1996, petitioners filed with the Regional Trial Court (RTC) of Parañaque City, Branch 274, a Complaint<sup>[20]</sup> for Annulment of Sale with Damages and Preliminary Injunction against Hongkong and Shanghai Banking Corporation, Ltd; Manuel S. Estacion; Hongkong and Shanghai Banking Corporation-Staff

Retirement Plan, as represented by Atty. Manuel G. Montecillo, Mr. Stuart P. Milne and Mr. Alejandro L. Custodio; Leonarda Leilani Amurao and Benedicta G. Flebron, in their capacities as Clerk of Court/*Ex-Officio* Sheriff and Sheriff-in-Charge of the RTC of Parañaque. Petitioners alleged, among others, that the foreclosure of their mortgaged property was tainted with bad faith, considering that they had paid all the arrears, interests and penalties due on their housing loan since August 1995, and were updated with their loan obligations up to June 1996.

In their Answer, respondents HSBC-SRP and Estacion argued that the entire loan obligations accelerated when petitioner Rosalina was terminated and ceased to be an employee of respondent bank as provided in the HSBC-SRP Rules and Regulations, and she failed to pay the entire balance of the housing loan. Also, petitioners were in default, having failed to pay the amortizations beginning January 1994 up to July 1995; thus, they had the right to extrajudicially foreclose the mortgaged property under their mortgage contract.

Respondent bank claimed that it should not have been impleaded in the complaint, since it was not privy to the real estate mortgage nor to the extrajudicial foreclosure proceedings.

On March 1, 2005, the RTC rendered its Decision<sup>[21]</sup> in favor of the petitioners, the dispositive portion of which reads:

WHEREFORE, all the foregoing duly considered, judgment is hereby rendered for the plaintiffs and against the defendants, ordering -

1) The issuance of the Writ of Preliminary Injunction dated August 4, 1997 to be as it is hereby made permanent;

2) The annulment or cancellation of the extrajudicial foreclosure sale conducted by the defendant sheriff on May 20, 1996;

3) The defendants bank, Retirement Plan, and Manuel S. Estacion to pay, jointly and severally, the plaintiff spouses the sum of two million (P2M) pesos as moral damages, P500,000.00 as exemplary damages; and

4) The defendants bank, Retirement Plan, and Manuel S. Estacion to pay, jointly and severally, the plaintiff spouses the sum of P100,000.00 as attorney's fees, plus P2,000.00 for every appearance, and costs of litigation.

SO ORDERED.<sup>[22]</sup>

In so ruling, the RTC found, among others, that the contract of real estate mortgage executed between respondent HSBC-SRP and petitioners, which was the sole basis for the extrajudicial foreclosure, did not contain the former's rules and regulations nor were made known to petitioners during the execution of the contract; thus, not binding on petitioners. It ruled that when petitioner Rosalina resumed payment of their housing loan's monthly amortizations, including all the arrears and interests on August 11, 1995 through petitioner Rosalina's salary savings account, which the bank received and acknowledged the payment to the knowledge and acquiescence of respondent HSBC-SRP, the latter was estopped from disclaiming such payment

and receipt of payment, despite the demand letters sent by respondent HSBC-SRP. It also found that the foremost contention that the foreclosure of the mortgage was valid, since petitioner Rosalina was terminated by the bank on December 27, 1993, which caused the acceleration of her housing loan, was not tenable since the issue of her termination was still pending appeal.

The RTC found respondents liable for damages under Articles 19<sup>[23]</sup> and 20<sup>[24]</sup> of the Civil Code. It based its finding on the act of respondent bank (willfully or negligently) in dismissing petitioner Rosalina, and when respondent HSBC-SRP followed through blindly and unilaterally by foreclosing the mortgage for failure of petitioners to pay the entire balance of her housing loan. Respondent Estacion's liability was due to his active participation in his co-respondents' actions.

Respondent bank filed its appeal. Respondent HSBC-SRP and Estacion filed their Motion for Reconsideration, which was denied by the RTC in an Order<sup>[25]</sup> dated November 8, 2005; thus, they also appealed the decision.

On August 11, 2011, the CA rendered its assailed Decision, the decretal portion of which reads:

IN LIGHT OF THE FOREGOING, premises considered, the instant appeal is GRANTED. Accordingly, the Decision of the RTC, Branch 274 of Parañaque City, dated March 1, 2005, in Civil Case No. 96-0363 is hereby REVERSED and SET ASIDE, and the complaint in said case is DISMISSED.

<sup>[26]</sup>

The CA found that petitioner Rosalina was able to avail of the housing loan from respondent HSBC-SRP by virtue of her employment with the bank; that when she availed of the housing loan under the SRP, she had, likewise, agreed and conformed to the rules and regulations laid down in the said retirement plan, which provides that should the employee's service with the bank be terminated prior to full repayment of the loan, the employee shall make a single payment to cover the outstanding balance. Hence, upon petitioner Rosalina's termination from employment on December 27, 1993, as an aftermath of joining the illegal strike, her entire outstanding obligations owing to the HSBC-SRP immediately became due and demandable in accordance with the SRP provision; that since petitioners refused and failed to settle their overdue loans and obligations in full, respondents merely exercised their right to foreclose their property in the event of default of payment in the principal obligation provided under the real estate mortgage.

The CA found no merit to petitioners' claim that the foreclosure of mortgage was anomalous, since they had not been remiss in paying their loan obligation. It ruled that there was no showing that the creditor had received and acknowledged full payment; that although partial payment had been credited and applied to the principal loan, a reservation for the complete satisfaction of the outstanding obligations was made known to petitioners; that petitioners must pay the amount due in its entirety for their obligation to be considered extinguished by payment; and that foreclosure was befitting in view of petitioners' default in satisfying their loan obligations. The CA found that respondent bank should not have been impleaded since it is neither a party nor a signatory to the real estate mortgage contract.

Hence, this petition for review on *certiorari* filed by petitioners.

The issues for resolution are (1) whether the extrajudicial foreclosure and auction sale of petitioners' property by respondent HSBC-SRP on May 20, 1996 was valid; and (2) whether petitioners are entitled to the payment of damages as well as attorney's fees.

Our jurisdiction in a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited only to questions of law as we are not a trier of facts. The matter of the validity of the foreclosure of petitioners' mortgaged property is factual. However, there are instances when we may review questions of fact, as when the findings of the Court of Appeals are contrary to those of the trial court, as in this case.<sup>[27]</sup>

We find that respondent HSBC-SRP's filing of the extrajudicial foreclosure proceedings on May 20, 1996 has no basis and, therefore, invalid.

It is established that petitioners failed to pay the monthly amortizations of their housing loan secured by a real estate mortgage on their property since January 1994, *i.e.*, after petitioner Rosalina was terminated by the bank on December 27, 1993. Thus, respondent HSBC-SRP sent demand letters dated June 13, 1994 and November 28, 1994 to petitioner Rosalina asking her to pay the outstanding housing loan obligation in full. Petitioner Rosalina's offer of partial payment was rejected by respondent HSBC-SRP. In the meantime, no foreclosure proceedings was yet filed by respondent HSBC-SRP against petitioners' mortgaged property. Subsequently, petitioner Rosalina received an Installment Due Reminder dated July 26, 1995, informing her of the overdue monthly amortizations, interests and penalty in the amount of P55,681.85, with an outstanding balance of P315,958.00. On August 11, 1995, petitioner Rosalina then deposited in her salary savings account the payment for all the principal and interest arrearages from January 1994 up to August 1995. The payments she made in her account were accepted by respondent bank and credited them to the payment of the overdue monthly amortizations of her housing loan.

While respondent HSBC-SRP wrote petitioner Rosalina a letter dated September 25, 1995 demanding payment of the latter's entire unpaid housing loan obligation, now with a reduced balance in the amount of P289,945.00, however, petitioner Rosalina still received an Installment Due Reminder<sup>[28]</sup> dated September 27, 1995 reminding her of her monthly installment and interest due, *sans* penalty charge, which she paid. Thereafter, petitioner Rosalina continuously received Installment Due Reminders<sup>[29]</sup> for the housing loan, to wit: dated December 21, 1995, February 26, 1996, March 13, 1996 and April 11, 1996, which showed a diminishing loan balance by reason of respondent HSBC-SRP's acceptance of payments of her monthly installments and interests due from September 1995 up to June 1996. Therefore, respondent HSBC-SRP is now estopped from foreclosing the mortgage property on May 20, 1996.

Article 1431 of the Civil Code defines estoppel as follows:

Art. 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.