

SECOND DIVISION

[G.R. No. 209452, July 26, 2017]

GOTESCO PROPERTIES, INC., PETITIONER, VS. SOLIDBANK CORPORATION (NOW METROPOLITAN BANK AND TRUST COMPANY), RESPONDENT.

DECISION

LEONEN, J.:

The requirement for publication of a Notice of Sale in an extrajudicial foreclosure is complied with when the publication is circulated at least in the city where the property is located.

This is a Petition for Review on Certiorari^[1] assailing the May 31, 2013 Decision^[2] and October 7, 2013 Resolution^[3] of the Court of Appeals in CA-G.R. CV No. 97748. The Court of Appeals affirmed the Decision of the Regional Trial Court, which dismissed the complaint filed by petitioner Gotesco Properties, Inc. (Gotesco) for the annulment of the foreclosure proceeding. The Court of Appeals also upheld the issuance of a writ of possession for respondent Solidbank Corporation (Solidbank), now Metropolitan Bank and Trust Company (Metrobank).

In 1995, Gotesco obtained from Solidbank a term loan of P300 million through its President, Mr. Jose Go (Mr. Go). This loan was covered by three (3) promissory notes. To secure the loan, Gotesco was required to execute a Mortgage Trust Indenture (Indenture) naming Solidbank-Trust Division as Trustee.^[4]

The Indenture, dated August 9, 1995, obliged Gotesco to mortgage several parcels of land in favor of Solidbank.^[5] One (1) of the lots mortgaged and used as a collateral was a property located in San Fernando, Pampanga, which was covered by Transfer Certificate of Title (TCT) No. 387371-R.^[6] A stipulation in the Indenture also irrevocably appointed Solidbank-Trust Division as Gotesco's attorney-in-fact.^[7] Under the Indenture, Gotesco also agreed to "at all times maintain the Sound Value of the Collateral."^[8]

When the loan was about to mature, Gotesco found it difficult to meet its obligation because of the 1997 Asian Financial Crisis.^[9] On January 24, 2000, Gotesco sent a letter to Solidbank proposing to restructure the loan obligation.^[10] The loan restructuring agreement proposed to extend the payment period to seven (7) years. The suggested period included a two (2)-year grace period.^[11]

In its February 9, 2000 letter,^[12] Solidbank informed Gotesco of a substantial reduction in the appraised value of its mortgaged properties. Based on an appraisal report submitted to Solidbank, the sound value of the mortgaged properties at that

time was at P381,245,840.00.^[13] Since the necessary collateral to loan ratio was 200%, Solidbank held that there was a deficiency in the collateral, which Gotesco had to address. Solidbank required Gotesco to replace or add to the mortgaged properties.^[14]

Gotesco construed the February 9, 2000 letter as Solidbank's implied agreement to the loan restructuring proposal.^[15] However, Gotesco found it unnecessary to address the alleged deficiency in the collateral. It insisted that the aggregate sound value of the mortgaged properties had not changed and was still at P1,076,905,000.00.^[16]

Solidbank sent a demand letter dated June 7, 2000 to Gotesco as the loan became due.^[17] Despite having received this demand letter, Gotesco failed to pay the outstanding obligation.^[18]

Solidbank then filed a Petition for the Extrajudicial Foreclosure of the lot covered by TCT No. 387371-R through Atty. Wilfrido Mangiliman (Atty. Mangiliman), a notary public.^[19]

In the Notice of Sale^[20] dated July 24, 2000, the public auction of the land located in Pampanga, covered by TCT No. 387371-R, was announced to be held on August 24, 2000 at 10:00 a.m. However, pursuant to paragraph 5 of A.M. No. 99-10-05-0 dated December 14, 1999,^[21] the Notice of Sale indicated that if the minimum requirement of two (2) bidders was not met, the sale was to be postponed and rescheduled on August 31, 2000.^[22]

The public auction was held on August 31, 2000^[23] and Solidbank was declared the winning bidder.^[24]

On February 5, 2001, Gotesco filed a complaint before Branch 42, Regional Trial Court, San Fernando, Pampanga for Annulment of Foreclosure Proceedings, Specific Performance, and Damages against Solidbank, Atty. Mangiliman, and the Register of Deeds of San Fernando, Pampanga.^[25]

Gotesco assailed the validity of the foreclosure proceeding claiming that it was premature and without legal basis.^[26] According to Gotesco, the jurisdictional requirements prescribed under Act No. 3135 were not complied with. First, Solidbank did not furnish Gotesco copies of the petition for extrajudicial foreclosure, notice of sale, and certificate of sale. Second, the filing fees were not paid. Lastly, even assuming the original period for loan payment was not extended, the prerequisites for the foreclosure proceeding provided in the Indenture were not met.^[27]

Section 5.02 of the Indenture provided:

5.02. Foreclosure. If any event of default shall have occurred and be continuing, the Trustee [Solidbank-Trust Division], on written instruction by the Majority Creditors [Solidbank], shall within three (3) Banking Days from receipt of such notice, give written

notice to the Company [appellant], copy furnished all Creditors, declaring all obligations secured by this Indenture due and payable and foreclosing the Collateral. Upon such declaration, the [appellant] shall pay to the [Solidbank-Trust Division], within ten (10) days from receipt of such notice, the amount sufficient to cover costs and expenses of collection, including compensation for the [Solidbank-Trust Division], its agents and attorneys.

In default of such payment, the [Solidbank-Trust Division] may proceed to foreclose this Indenture, judicially or extra-judicially under Act No. 3135, as amended. Thereupon, on demand of the [Solidbank-Trust Division], the appellant shall immediately turn over possession of the Collateral to any party designated as the duly authorized representative of the [Solidbank-Trust Division], free of all charges. (Emphasis supplied.)^[28]

In their Answer with Counterclaim, Solidbank alleged that it never entered into a restructuring agreement with Gotesco. Solidbank claimed that it complied with the publication and posting requirements laid down by Act No. 3135. It also asserted that Gotesco's complaint was insufficient because it failed to state a cause of action.^[29]

On October 31, 2001, Solidbank filed an Ex-Parte Petition for the Issuance of a Writ of Possession^[30] before Branch 48, Regional Trial Court, San Fernando, Pampanga.^[31]

The two (2) cases were consolidated before Branch 42, Regional Trial Court, San Fernando, Pampanga.^[32] However, the presiding judge of Branch 42 recused himself after disclosing that he was a depositor in Metrobank, previously Solidbank. The case was re-raffled to Branch 47.^[33]

In its May 4, 2011 Decision,^[34] Branch 47, Regional Trial Court, San Fernando, Pampanga dismissed Gotesco's complaint for the annulment of the foreclosure proceeding and granted the Writ of Possession in Solidbank's favor:

WHEREFORE, premises considered, the plaintiff's Complaint in Civil Case No. 12212 is hereby **DISMISSED** for lack of merit.

On the other hand, the Ex-Parte Petition in LRC No. 762 is hereby **GRANTED**. Accordingly, let a writ of possession over the property covered by Transfer Certificate of Title No. 387371-R be issued against Gotesco Properties, Inc., and all persons claiming rights under it.

SO ORDERED.^[35] (Emphasis in the original)

Gotesco filed a Motion for Reconsideration, which was denied on September 6, 2011.^[36]

Gotesco appealed the rulings before the Court of Appeals. It argued that contrary to the trial court's finding, the restructuring agreement was perfected. The foreclosure was premature because Gotesco was not in default. Solidbank also failed to adhere

to the stipulation which required that in the event of default, a notice shall be given to Gotesco. Moreover, Mr. Go allegedly was not authorized to appoint Solidbank as an attorney-in-fact.^[37]

In its May 31, 2013 Decision,^[38] the Court of Appeals affirmed the decision of the Regional Trial Court. It ruled that there was no perfected restructuring agreement between the parties.^[39] It cited Article 1319 of the Civil Code,^[40] which requires absolute acceptance of the offer before it can be considered a binding contract.^[41] It found that Gotesco failed to prove that Solidbank clearly and unequivocally accepted the proposal for loan restructuring.^[42]

The Court of Appeals also declared that Gotesco was in default.^[43] It quoted Section 4.03 of the Indenture, which provided:

The Company [Gotesco/appellant] shall at all times maintain the Sound Value of the Collateral at a level equal to that provided for under Sec. 2.01 of this Indenture and, for such purpose, shall make such substitutions, replacements, and additions for or to the Collateral.

If at any time, in the opinion of the Trustee [Solidbank-Trust Division] and the Majority Creditors [Solidbank/appellee], the Sound Value of the Collateral is impaired, or there is substantial and imminent danger of such impairment, the [appellant] shall, upon demand of [Solidbank-Trust Division], effect the substitution of the Collateral or part thereof with another or others and/or execute additional mortgages on other properties and/or deposit cash with the [Solidbank-Trust Division] satisfactory to the [Solidbank-Trust Division] and [Solidbank].^[44]
(Emphasis in the original)

Under the Indenture, Gotesco agreed to provide additional collateral "[i]f at any time, in the opinion of the Trustee and the Majority Creditors, the Sound Value of the Collateral is impaired."^[45] Gotesco should have provided the additional security demanded by Solidbank after learning that the value of the properties used as collateral had been reduced significantly. When Gotesco "chose to rely on its opinion, over and above and contrary to the opinion of the Trustee and the Creditor," it defaulted on its obligation.^[46] Thus, the Court of Appeals ruled that Gotesco's refusal to address the inadequacy of the collateral was sufficient reason for Solidbank to foreclose the property.

The Court of Appeals found that the requisites under Section 3 of Act No. 3135 were satisfied.^[47] The Notice of Sale was physically posted in the Office of the Clerk of Court, the Registry of Deeds, and the Capitol Grounds.^[48] Alongside the posting, the Notice of Sale was published in *Remate* in its issues dated July 29, 2000, August 5, 2000, and August 12, 2000.^[49] The Court of Appeals rejected Gotesco's allegation that the publication was invalid for being published in a newspaper not printed in the city where the property was located. According to the Court of Appeals, the fact that *Remate* was published in Metro Manila, not in Pampanga, did not mean that it was not a newspaper of general circulation.^[50] It was still a newspaper of general circulation; thus, the publication was valid. The Court of Appeals ruled, "[t]he Notice of Sale, Affidavit of Publication, and Affidavit of Posting

sufficiently prove that the jurisdictional requirements regarding publication of the Notice were complied with."^[51] There was also documentary evidence proving that contrary to Gotesco's claim, it received a demand letter from Solidbank.^[52]

The Court of Appeals also determined that Mr. Go had the authority to agree to the conditions related to securing the loan.^[53] It examined the Secretary's Certificate which quoted verbatim the Board Resolution authorizing Mr. Go to enter into the loan agreement:^[54]

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RESOLVED, AS IT HEREBY RESOLVED, that the Corporation [appellant] be as it is hereby authorized, to enter into a Mortgage Trust Indenture (MTI) arrangement with Solidbank Corporation-Trust Division.

RESOLVED FURTHER, that the [appellant], be as it is hereby authorized to secure a loan in the amount of THREE HUNDRED MILLION only (P300,000,000.00) PESOS from Solidbank Corporation [appellant] under said Mortgage Trust Indenture on such items, conditions, and stipulations that the [appellant] may think fit for the purpose of the loan and to mortgage the [appellant]'s assets as security and/or collateral for the loan and other credit facilities.

RESOLVED FURTHER, that JOSE C. GO, be, as he is hereby authorized, to negotiate and accept the terms and conditions and to sign, execute and deliver any and all promissory notes, bonds, mortgages and all other documents necessary in the execution of the aforesaid resolutions with the said banks, for and in behalf of the [appellant].^[55]

Lastly, since there was no third party with adverse interest that occupied the property, the issuance of the Writ of Possession was ministerial.^[56]

The dispositive portion of the Court of Appeals May 31, 2013 Decision provided:

WHEREFORE, premises considered, the appeal is hereby **DISMISSED**. The Decision dated May 4, 2011, and the Order dated September 6, 2011, of the Regional Trial Court, Branch 47, San Fernando, Pampanga in the consolidated cases docketed as Civil Case No. 12212 and LRC No. 726, are hereby **AFFIRMED**. Costs against appellant Gotesco Properties Incorporated.

SO ORDERED.^[57] (Emphasis in the original)

Gotesco filed a Motion for Reconsideration but it was denied in the Resolution^[58] promulgated on October 7, 2013.

Hence, this Petition for Review on Certiorari was filed on November 28, 2013.^[59]

In this Petition, petitioner Gotesco maintains that the foreclosure proceeding is null and void. It insists that respondent Solidbank agreed to restructure its loan, granting a "payment period of seven (7) years with two (2) years grace period."^[60]