

FIRST DIVISION

[G.R. No. 195272, January 14, 2015]

BANK OF THE PHILIPPINE ISLANDS (FORMERLY PRUDENTIAL BANK) PETITIONER, VS. SPOUSES DAVID M. CASTRO AND CONSUELO B. CASTRO, RESPONDENTS.

D E C I S I O N

PEREZ, J.:

For resolution is the petition for review on *certiorari* assailing the Decision^[1] dated 26 November 2009 of the Court of Appeals, Special Sixth Division in CA-G.R. CV No. 88870 and the Resolution^[2] dated 14 January 2011 of the Court of Appeals, Second Division denying the motion for reconsideration, which reversed and set aside the judgment^[3] rendered by the Regional Trial Court of Quezon City, Branch 97 (RTC) dismissing the complaint for Declaration of Nullity of Sheriff's Certificate of Sale and Damages against Prudential Bank.

The Complaint has its origins from the two loans contracted by respondent Spouses David M. Castro (David)^[4] and Consuelo B. Castro (Consuelo) from Prudential Bank in the amounts of P100,000.00 and P55,000.00 in July and August 1987. The first loan's maturity date was on 18 January 1988 while the second loan had a maturity date of 23 February 1988. The P100,000.00 loan was secured by a Real Estate Mortgage (REM) over petitioners' property located in Quezon City and covered by Transfer Certificate of Title (TCT) No. 364277 while the P55,000.00 loan was secured by another REM over two parcels of land located in Alaminos, Laguna covered by TCT Nos. T-2225 and T-2226, registered in the name of David's mother, Guellerma Malabanan.

The loans remained unpaid as of 30 April 1996 and the balances ballooned to P290,205.05 on the P100,000.00 loan and P96,870.20 on the P55,000.00 loan. Prudential Bank, through counsel, filed two separate petitions for foreclosure of the mortgage. In their first petition, Prudential Bank admitted that through inadvertence, the photocopies of the first two pages of the REM covering the properties in Laguna were mixed and attached to the photocopies of the last two pages of the REM covering the Quezon City property.^[5] Thus, in the Notice of Sheriff's Sale, the name "Guellerma Malabanan rep. by her AIF David M. Castro" appeared as mortgagor while the amount of mortgaged indebtedness is P96,870.20. The real property described therein however is the Quezon City property.

On 26 August 1996, the Quezon City property was sold at a public auction in favor of Prudential Bank whose winning bid was P396,000.00.

In their Complaint, Spouses Castro alleged that the extrajudicial foreclosure and

sale of the Quezon City property is null and void for lack of notice and publication of the extrajudicial foreclosure sale. Spouses Castro proffered that the property foreclosed is not one of the properties covered by the REM executed by Guellerma Malabanan which was the basis of the Notice of Sheriff's Sale which was posted and published. Spouses Castro prayed for the declaration of the Sheriff's Certificate of Sale as null and void and for award of damages.^[6]

In their Answer, Prudential Bank asserted that Spouses Castro were fully aware that the Quezon City property was to be foreclosed considering that the obligation secured by it remained unpaid as of the date of the foreclosure sale. Prudential Bank cited a clerical and harmless inadvertence in the preparation of the petition for extrajudicial foreclosure but nonetheless, it claimed that Spouses Castro, having been notified of the scheduled foreclosure of the mortgage of the Quezon City property, should have noticed the inadvertence and alerted the sheriff. Their failure to do so, Prudential Bank added, clearly amounted to laches.^[7]

The issue before the RTC was whether Prudential Bank legally complied with the jurisdictional requirement of due notice prior to the extrajudicial sale of the property in question. The trial court ruled in favor of Prudential Bank and dismissed the complaint. It found that:

x x x there was no substantial defect on the published and posted notice of Sheriff's sale. The public had been sufficiently informed of the identity of the property to be sold, identity of the mortgagor-borrower whose unpaid loan is secured by the mortgage and the identity of the mortgagee. The notice did not render plaintiffs themselves uninformed of the nature of the property to be sold.^[8]

The trial court further held that the objective of notice was attained since there was sufficient publicity of the sale through newspaper publication and that there was no showing that the property was sold for a price far below its value, an intimation of collusion between the sheriff who conducted the sale and the bank.^[9]

On appeal, the Court of Appeals reversed the ruling of the trial court. The appellate court stressed the importance of notice in a foreclosure sale and ruled that failure to advertise a mortgage foreclosure sale in compliance with statutory requirements constitutes a jurisdictional defect invalidating the sale.^[10]

Prudential Bank filed a motion for reconsideration. In a Resolution dated 14 January 2011, the Court of Appeals, Second Division, expounded on the previous Decision. The appellate court clarified that the erroneous designation of Guellerma Malabanan as mortgagor, instead of David, did not affect the validity of the notice. With respect to the amount of the mortgaged indebtedness however, the appellate court noted that the discrepancy *vis-a-vis* the actual amount owed by Spouses Castro is so huge that it can hardly be considered immaterial. The appellate court opined that declaring a small amount of indebtedness in the petition for extrajudicial foreclosure and in the notice of sheriff's sale would effectively depreciate the value of the property. The appellate court then concluded that statutory provisions governing publication of notice of mortgage foreclosure sales must be strictly complied with

and that even slight deviations will invalidate the notice.^[11]

Petitioner Bank of the Philippine Islands (BPI), being the successor-in-interest of Prudential Bank, by virtue of the merger of the two banking institutions with BPI as the surviving entity, filed the instant petition for review defending the ruling of the trial court and reiterating that the published Notice of Sheriff's Sale would show that the subject of the sale, the Quezon City property, was sufficiently and properly described and identified. Petitioner refuted the appellate court's finding that by indicating a lower amount of indebtedness, the notice depreciated the value of the property subject of sale. Petitioner cited *Olizon v. Court of Appeals*,^[12] wherein the court declared that immaterial errors and mistakes cannot affect the sufficiency of the notice. Petitioner reiterated Prudential Bank's right to foreclose the mortgage constituted over the Quezon City property because the loan secured by the mortgage had not been paid when it fell due and remained so when the mortgage was scheduled for foreclosure.^[13]

In her Comment, Consuelo points out as glaringly erroneous the Notice of Sheriff's Sale which named the mortgagor as "Guellerma Malabanan" and the mortgage indebtedness as P96,870.20. Consuelo avers that the properties, the foreclosure of which Prudential Bank appears to seek in its petition, were situated in Laguna, thus, the Sheriff of Quezon City had no jurisdiction to issue a Notice for Sale of said property. Consuelo insists that even if the property was sold for more than the mortgage indebtedness, such would not render the sale valid because public policy is involved in the need for strict compliance with the requirements of notice in extrajudicial foreclosures of mortgage. It was posited that a lesser amount of indebtedness as stated in the notice would mislead a potential bidder in public auction and subject the value of the property to risk of unwarranted diminution. Finally, Consuelo counters that petitioner's reliance on *Olizon* is misplaced because the alleged failure of notice in said case lay in the fact that the notice was published in a newspaper in lieu of being posted. Consuelo argues that in this case the property itself was misidentified in the petition for foreclosure.^[14]

The submissions of the parties indicate the basic issue to be whether the errors in the Notice of Sheriff's Sale invalidate the notice and render the sale and the certificate of such sale void.

We find merit in the petition.

At the outset, it bears emphasis that foreclosure proceedings have in their favor the presumption of regularity and the party who seeks to challenge the proceedings has the burden of evidence to rebut the same.^[15] In this case, respondent failed to prove that Prudential Bank has not complied with the notice requirement of the law.

Sections 2, 3, and 4 of Act No. 3135 laid down the procedure regarding foreclosure sale:

Sec. 2. Said sale cannot be made legally outside of the province in which the property sold is situated; and in case the place within said province in which the sale is to be made is subject to stipulation, such sale shall be made in said place or in the municipal building of the municipality in

which the property or part thereof is situated.

Sec. 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 city.

Sec. 4. The sale shall be made at public auction, between the hours of nine in the morning and four in the afternoon; and shall be under the direction of the sheriff of the province, the justice or auxiliary justice of the peace of the municipality in which such sale has to be made, or a notary public of said municipality, who shall be entitled to collect a fee of five pesos each day of actual work performed, in addition to his expenses.

In *Philippine National Bank v. Maraya, Jr.*,^[16] we elucidated that one of the most important requirements of Act No. 3135 is that the notice of the time and place of sale shall be given. If the sheriff acts without notice, or at a time and place other than that designated in the notice, the sheriff acts without warrant of law.^[17] In this case, the property sold in the public auction is located in Quezon City and the foreclosure sale proceeded as scheduled at 10:00 o'clock in the morning on 26 August 1996 at the Hall of Justice in Quezon City with Prudential Bank as the winning bidder, registering the highest bid of P396,000.00.

In *Century Savings Bank v. Samonte*^[18] citing *Olizon v. Court of Appeals*,^[19] the Court reiterated the purpose of the rule on notice, to wit:

The object of a notice of sale is to inform the public of the nature and condition of the property to be sold, and of the time, place and terms of the sale. Notices are given for the purpose of securing bidders and to prevent a sacrifice of the property. If these objects are attained, immaterial errors and mistakes will not affect the sufficiency of the notice; but if mistakes or omissions occur in the notices of sale, which are calculated to deter or mislead bidders, to depreciate the value of the property, or to prevent it from bringing a fair price, such mistakes or omissions will be fatal to the validity of the notice, and also to the sale made pursuant thereto.^[20]

The mistakes and omissions referred to in the above-cited ruling which would invalidate notice pertain to those which: 1) are calculated to deter or mislead bidders, 2) to depreciate the value of the property, or 3) to prevent it from bringing a fair price.

In this case, the Notice of Sheriff's Sale^[21] states:

NOTICE OF SHERIFF'S SALE