FIRST DIVISION

[G.R. No. 213014, October 14, 2015]

MAYBANK PHILIPPINES, INC. (FORMERLY PNB-REPUBLIC BANK[1]), PETITIONER, VS. SPOUSES OSCAR AND NENITA TARROSA, RESPONDENTS.

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*[2] are the Decision[3] dated November 29, 2013 and the Resolution[4] dated May 13, 2014 of the Court of Appeals (CA) in CA-G.R. CV No. 02211, which affirmed the Decision[5] dated June 16, 2005 of the Regional Trial Court of Bacolod City, Branch 41 (RTC) in Civil Case No. 98-10451 declaring the extrajudicial foreclosure sale of the property covered by Transfer Certificate of Title (TCT) No. T-5649 as null and void for being barred by prescription.

The Facts

On December 15, 1980, respondents-spouses Oscar and Nenita Tarrosa (Sps. Tarrosa) obtained from then PNB-Republic Bank, now petitioner Maybank Philippines, Inc. (Maybank), a loan in the amount of P91,000.00. The loan was secured by a Real Estate Mortgage[6] dated January 5, 1981 (real estate mortgage) over a 500-square meter parcel of land situated in San Carlos City, Negros Occidental (subject property), covered by TCT No. T-5649,[7] and the improvements thereon.[8]

After paying the said loan, or sometime in March 1983, Sps. Tarrosa obtained another loan from Maybank in the amount of P60,000.00 (second loan),[9] payable on March 11, 1984.[10] However, Sps. Tarrosa failed to settle the second loan upon maturity.[11]

Sometime in April 1998, Sps. Tarrosa received a Final Demand Letter[12] dated March 4, 1998 (final demand letter) from Maybank requiring them to settle their outstanding loan in the aggregate amount of P564,579.91, inclusive of principal, interests, and penalty charges.[13] They offered to pay a lesser amount, which Maybank refused.[14] Thereafter, or on June 25, 1998, Maybank commenced extrajudicial foreclosure proceedings[15] before the office of Ex-Officio Provincial Sheriff Ildefonso Villanueva, Jr. (Sheriff Villanueva). The subject property was eventually sold in a public auction sale held on July 29, 1998[16] for a total bid price of P600,000.00, to the highest bidder, Philmay Property, Inc. (PPI), which was thereafter issued a Certificate of Sale[17] dated July 30, 1998.[18]

On September 7, 1998, Sps. Tarrosa filed a complaint[19] for declaration of nullity and invalidity of the foreclosure of real estate and of public auction sale proceedings and damages with prayer for preliminary injunction against Maybank, PPI, Sheriff Villanueva, and the Registry of Deeds of San Carlos City, Negros Occidental (RD-San Carlos), before the RTC, docketed as Civil Case No. 98-10451. They averred, *inter alia,* that: (*a*) the second loan was a clean or unsecured loan; (*b*) after receiving the final demand letter, they tried to pay the second loan, including the agreed interests and charges, but Maybank unjustly refused their offers of payment; and (*c*) Maybank's right to foreclose had prescribed or is barred by laches.[20]

On the other hand, Maybank and PPI countered[21] that: (*a*) the second loan was secured by the same real estate mortgage under a continuing security provision therein; (*b*) when the loan became past due, Sps. Tarrosa promised to pay and negotiated for a restructuring of their loan, but failed to pay despite demands; and (*c*) Sps. Tarrosa's positive acknowledgment and admission of their indebtedness controverts the defense of prescription.

The RTC Ruling

In a Decision[23] dated June 16, 2005, the RTC held that the second loan was subject to the continuing security provision in the real estate mortgage.[24] However, it ruled that Maybank's right to foreclose, reckoned from the time the mortgage indebtedness became due and payable on March 11, 1984, had already prescribed, considering the lack of any timely judicial action, written extrajudicial demand or written acknowledgment by the debtor of his debt that could interrupt the prescriptive period.[25] Accordingly, it declared the extrajudicial foreclosure proceedings affecting the subject property as null and void, and ordered Maybank to pay Sps. Tarrosa moral and exemplary damages, as well as attorney's fees and litigation expenses.[26]

Maybank filed a motion for reconsideration[27] which was, however, denied in an Order[28] dated December 9, 2005, prompting it to appeal[29] to the CA.

The CA Ruling

In a Decision[30] dated November 29, 2013, the CA affirmed the RTC ruling that Maybank's right to foreclose the real estate mortgage over the subject property is already barred by prescription. It held that the prescriptive period should be reckoned from March 11, 1984 when the second loan had become past due and remained unpaid since demand was not a condition *sine qua non* for the accrual of the latter's right to foreclose under paragraph 5 of the real estate mortgage. It observed that Maybank failed to present evidence of any timely written extrajudicial demand or written acknowledgment by the debtors of their debt that could have effectively interrupted the running of the prescriptive period.[31]

Undaunted, Maybank moved for reconsideration,[32] which was denied in a Resolution[33] dated May 13, 2014; hence this petition.

The Issues Before the Court

The essential issue for the Court's resolution is whether or not the CA committed reversible error in finding that Maybank's right to foreclose the real estate mortgage over the subject property was barred by prescription.

The Court's Ruling

The petition is meritorious.

An action to enforce a right arising from a mortgage should be enforced within ten (10) years from the time the right of action accrues, *i.e.,* when the mortgagor defaults in the payment of his obligation to the mortgagee; otherwise, it will be barred by prescription and the mortgagee will lose his rights under the mortgage.[34] However, mere delinquency in payment does not necessarily mean delay in the legal concept. To be in default is different from mere delay in the grammatical sense, because it involves the beginning of a special condition or status which has its own peculiar effects or results.[35]

In order that the debtor may be in default, it is necessary that: (*a*) the obligation be demandable and already liquidated; (*b*) the debtor delays performance; and (*c*) the creditor requires the performance judicially or extrajudicially,[36] unless demand is not necessary - *i.e*., when there is an express stipulation to that effect; where the law so provides; when the period is the controlling motive or the principal inducement for the creation of the obligation; and where demand would be useless. Moreover, it is not sufficient that the law or obligation fixes a date for performance; it must further state expressly that after the period lapses, default will commence. [37] Thus, **it is only when demand to pay is unnecessary in case of the aforementioned circumstances, or when required, such demand is made and subsequently refused that the mortgagor can be considered in default and the mortgagee obtains the right to file an action to collect the debt or foreclose the mortgage**.[38]

In the present case, both the CA and the RTC reckoned the accrual of Maybank's cause of action to foreclose the real estate mortgage over the subject property from the maturity of the second loan on May 11, 1984. The CA further held that demand was unnecessary for the accrual of the cause of action in light of paragraph 5 of the real estate mortgage, which pertinently provides:

> 5. In the event that the Mortgagor herein should fail or refuse to pay any of the sums of money secured by this mortgage, or any part thereof, in accordance with the terms and conditions herein set forth, or should he/it fail to perform any of the conditions stipulated herein, then and in any such case, the Mortgagee shall have the right, at its election to foreclose this mortgage, [x x x].[39]

However, this provision merely articulated Maybank's right to elect foreclosure upon Sps. Tarrosa's failure or refusal to comply with the obligation secured, which is one of the rights duly accorded to mortgagees in a similar situation.[40] In no way did it