

## SECOND DIVISION

[ G.R. No. 173183, November 18, 2013 ]

**SYCAMORE VENTURES CORPORATION AND SPOUSES SIMON D. PAZ AND LENG LENG PAZ, PETITIONERS, VS. METROPOLITAN BANK AND TRUST COMPANY, RESPONDENT.**

### DECISION

**BRION, J.:**

*We are once more faced by a petition filed by debtors who could not pay their indebtedness and who, at the point of foreclosure, sought judicial recourse to delay the inevitable. In this case, the issue used as anchor is the valuation of the mortgage property's appraised value – an issue that hardly carries any significant consequence in extrajudicial foreclosure proceedings. How the delay in the foreclosure has affected the parties is a matter that is not in the record before us, but delay, if it had been the objective sought, came as it has come in many other similar cases. To be sure, the Judiciary has been affected by these cases as they have unnecessarily clogged the dockets of our courts, to the detriment of more important cases equally crying for attention.*

The petitioners, Sycamore Ventures Corporation (*Sycamore*) and the spouses Simon D. Paz and Leng Leng Paz, challenge the decision<sup>[1]</sup> dated May 3, 2006 and the resolution<sup>[2]</sup> dated June 19, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 88463. The CA reversed and set aside the orders<sup>[3]</sup> dated August 5, 2004 and November 22, 2004 of the Regional Trial Court (RTC), Branch 43, San Fernando, Pampanga, in Civil Case No. 12569.

### The Factual Antecedents

Sixteen years ago (or sometime in 1997), Sycamore and the spouses Paz obtained from respondent Metropolitan Bank and Trust Company (*Metrobank*) a credit line of P180,000,000.00, secured by 10 real estate mortgages<sup>[4]</sup> over Sycamore's 11 parcels of land,<sup>[5]</sup> together with their improvements.<sup>[6]</sup> Sycamore and the spouses Paz withdrew from the credit line the total amount of P65,694,914.26, evidenced by 13 promissory notes.<sup>[7]</sup>

Because the petitioners failed to pay their loan obligations and for violations of the terms and conditions of their 13 promissory notes, Metrobank instituted extrajudicial foreclosure proceedings over the six real estate mortgages, pursuant to Act No. 3135, as amended.<sup>[8]</sup> The public auction sale was set for various dates – March 22, 2000, April 23, 2000 and May 23, 2000 – but the sale did not take place because Sycamore and the spouses Paz asked for postponements.

Metrobank subsequently restructured Sycamore and the spouses Paz's loan, resulting in the issuance of one promissory note denominated as PN No. 751622 736864.92508.000.99, in lieu of the 13 promissory notes<sup>[9]</sup> previously issued, and the execution of a single real estate mortgage covering the 12 parcels of land.<sup>[10]</sup>

### ***Application for Extrajudicial Foreclosure***

Despite reminders, Sycamore and the spouses Paz still failed to settle their loan obligations, compelling Metrobank to file a second petition for auction sale, which was set for October 25, 2002.

On October 16, 2002, Sycamore and the spouses Paz once again asked for the postponement of the October 25, 2002 public auction sale; they asked that the sale be moved to November 26, 2002, but this time Metrobank refused to give in.<sup>[11]</sup>

### ***Civil Case No. 12569 for Annulment of Contract and Real Estate Mortgage with Temporary Restraining Order and Injunction***

On November 25, 2002, Sycamore and the spouses Paz filed before the RTC, Branch 43, San Fernando Pampanga, a complaint for the annulment of the contract and of the real estate mortgage. They likewise asked for the issuance of a temporary restraining order (*TRO*).

The petitioners disputed Metrobank's alleged unilateral and arbitrary reduction of the mortgaged properties' appraisal value from P1,200.00 to P300.00-P400.00 per square meter. They likewise sought the maintenance of the *status quo*, to enjoin Metrobank, and to prevent it from proceeding with the extrajudicial foreclosure.

On the same day, the Executive Judge issued a 72-hour *TRO*, directing the sheriff to cease and desist from proceeding with the scheduled public auction.<sup>[12]</sup> After summary hearing, Judge Carmelita S. Gutierrez-Fruelda, RTC, San Fernando Pampanga, ordered the extension of the *TRO* to its full 20-day term.<sup>[13]</sup>

On December 17, 2002, Judge Fruelda issued a writ of preliminary injunction which Metrobank unsuccessfully resisted through a motion for reconsideration that was denied.<sup>[14]</sup> Thus, Metrobank ran to the CA on a petition for *certiorari*<sup>[15]</sup> to question the RTC orders for grave abuse of discretion.

The CA dismissed Metrobank's petition for lack of merit and upheld the RTC's issued injunction.

### ***Order for Appointment of Independent Commissioners***

Meanwhile, the proceedings in the main case continued. At the trial, Sycamore and the spouses Paz moved for the appointment of independent commissioners to determine the mortgaged properties' appraisal value.<sup>[16]</sup> They mainly alleged that Metrobank arbitrarily and unilaterally reduced the mortgaged properties' appraisal

value; hence, the need for their reappraisal to determine their true value.

In an order dated August 5, 2004, the RTC granted the petitioners' motion, and again Metrobank was unsuccessful in securing a reconsideration.

Metrobank thus again went to the CA on a petition for *certiorari* under Rule 65, imputing grave abuse of discretion on the RTC for issuing the questioned order. The bank alleged that the appraisal value of the mortgaged properties is not an issue in the proceedings because their value is already a matter of record.

On May 3, 2006, the CA this time granted Metrobank's petition for *certiorari* and set aside the RTC's orders. It found that the appraisal value of the mortgaged properties was not an issue since the real estate mortgage and the promissory note already indicated with certainty the amount of the loan obligation.

It was Sycamore and the spouses Paz this time who filed their motion for reconsideration which the CA denied. Significantly, the CA noted that the determination of the properties' appraisal value has nothing to do with the question of whether the foreclosure proceeding will proceed.

The CA's denial gave rise to the present petition for review on *certiorari*.

### **The Petition**

Sycamore and the spouses Paz contend that the CA erred in setting aside the RTC's order granting their motion for appointment of independent commissioners. They argue that it had the effect of preventing the RTC's determination of a **critical question of fact** – *i.e.*, the determination of the mortgaged properties' true valuation – which, they insist, is an issue that needs to be resolved prior to the determination of the foreclosure's validity.

They claim that before resolving the said issue, the RTC has to decide the following prejudicial questions, namely:

- (1) Whether Metrobank validly reduced the mortgaged properties' valuation; and
- (2) Whether Metrobank can validly foreclose the mortgaged properties at a further reduced valuation.<sup>[17]</sup>

Lastly, Sycamore and the spouses Paz invoke this Court's intervention to prevent an unfair situation where the mortgage foreclosure, based on Metrobank's arbitrary and unilateral reduction of the properties' appraisal value, would deprive them of all their properties and, at the same time, leave a deficiency of P500,000,000.00.

### **The Issue**

The core issue for our determination is whether the determination of the mortgaged properties' appraisal value constitutes a prejudicial question that warrants the suspension of the foreclosure proceedings.

Simply put, is the appraisal value of the mortgaged properties material in the mortgage foreclosure's validity?

### **The Court's Ruling**

**We deny the petition for lack of merit.** The CA did not err when it set aside the RTC's order granting the motion for appointment of independent commissioners.

#### ***Remedies of a secured creditor***

A secured creditor may institute against the mortgage debtor either a personal action for the collection of the debt, a real action to judicially foreclose the real estate mortgage, or an extrajudicial judicial foreclosure of the mortgage. The remedies, however, are alternative, not cumulative, and the election or use of one remedy operate as a waiver of the others.<sup>[18]</sup>

We discussed these legal points in *Bachrach Motor Co., Inc. v. Icaranga*<sup>[19]</sup> and ruled that:

[I]n the absence of express statutory provisions, a mortgage creditor may institute against the mortgage debtor either a personal action for debt or a real action to foreclose the mortgage. In other words, he may pursue either of the two remedies, but not both. By such election, his cause of action can by no means be impaired, for each of the two remedies is complete in itself. Thus, an election to bring a personal action will leave open to him all the properties of the debtor for attachment and execution, even including the mortgaged property itself. And, if he waives such personal action and pursues his remedy against the mortgaged property, an unsatisfied judgment thereon would still give him the right to sue for a deficiency judgment, in which case, all the properties of the defendant, other than the mortgaged property, are again open to him for the satisfaction of the deficiency. In either case, his remedy is complete, his cause of action undiminished, and any advantages attendant to the pursuit of one or the other remedy are purely accidental and are all under his right of election.

In the present case, Metrobank elected the third remedy – the extrajudicial foreclosure of the real estate mortgage.

#### ***Extrajudicial foreclosure under Act No. 3135***

Extrajudicial foreclosure is governed by Act No. 3135, as amended by Act No. 4118.

It provides in its Section 1 that:

SECTION 1. When a sale is made under a special power inserted in or attached to any real-estate mortgage hereafter made as security for the payment of money or the fulfillment of any other obligation, the

provisions of the following election shall govern as to the manner in which the sale and redemption shall be effected, whether or not provision for the same is made in the power.

In brief, Act No. 3135 recognizes the right of a creditor to foreclose a mortgage upon the mortgagor's failure to pay his/her obligation. In choosing this remedy, the creditor enforces his lien through the sale on foreclosure of the mortgaged property. The proceeds of the sale will then be applied to the satisfaction of the debt. In case of a deficiency, the mortgagee has the right to recover the deficiency resulting from the difference between the amount obtained in the sale at public auction, and the outstanding obligation at the time of the foreclosure proceedings.<sup>[20]</sup>

Certain requisites must be established before a creditor can proceed to an extrajudicial foreclosure, namely: *first*, there must have been the failure to pay the loan obtained from the mortgagee-creditor; *second*, the loan obligation must be secured by a real estate mortgage; and *third*, the mortgagee-creditor has the right to foreclose the real estate mortgage either judicially or extrajudicially.

Act No. 3135 outlines the notice and publication requirements and the procedure for the extrajudicial foreclosure which constitute a condition *sine qua non* for its validity. Specifically, Sections 2, 3 and 4 of the law prescribe the formalities of the extrajudicial foreclosure proceeding, which we quote:

SECTION 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.

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 city.

SECTION 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.

***Act No. 3135 does not require  
determination of appraised value***

All the above provisions are quoted *verbatim* to stress that Act No. 3135 has no requirement for the determination of the mortgaged properties' appraisal value.