

FIRST DIVISION

[G.R. No. 198800, December 11, 2013]

JOSE T. RAMIREZ, PETITIONER, VS. THE MANILA BANKING CORPORATION, RESPONDENT.

DECISION

VILLARAMA, JR., J.:

We have consistently held that **unless the parties stipulate**, personal notice to the mortgagor in extrajudicial foreclosure proceedings is not necessary because Section 3^[1] of Act No. 3135^[2] only requires the posting of the notice of sale in three public places and the publication of that notice in a newspaper of general circulation.^[3]

Before us is a petition for review on certiorari under Rule 45 of the Decision^[4] dated November 26, 2010 and Resolution^[5] dated September 28, 2011 of the Court of Appeals (CA) in CA-G.R. CV No. 80616.

The facts of the case are as follows:

Petitioner Jose T. Ramirez mortgaged two parcels of land located at Bayanbayanan, Marikina City and covered by Transfer Certificate of Title (TCT) Nos. N-10722^[6] and N-23033^[7] in favor of respondent The Manila Banking Corporation to secure his P265,000 loan. The real estate mortgage provides that all correspondence relative to the mortgage including notifications of extrajudicial actions shall be sent to petitioner Ramirez at his given address, to wit:

N) All correspondence relative to this MORTGAGE, including demand letters, summons, subpoenas or notifications of any judicial or extrajudicial actions shall be sent to the MORTGAGOR at the address given above or at the address that may hereafter be given in writing by the MORTGAGOR to the MORTGAGEE, and the mere act of sending any correspondence by mail or by personal delivery to the said address shall be valid and effective notice to the MORTGAGOR for all legal purposes and the fact that any communication is not actually received by the MORTGAGOR, or that it has been returned unclaimed to the MORTGAGEE, or that no person was found at the address given, or that the address is fictitious or cannot be located, shall not excuse or relieve the MORTGAGOR from the effects of such notice.^[8]

Respondent filed a request for extrajudicial foreclosure of real estate mortgage^[9] before Atty. Hipolito Sañez on the ground that Ramirez failed to pay his loan despite demands. During the auction sale on September 8, 1994, respondent was the only bidder for the mortgaged properties.^[10] Thereafter, a certificate of sale^[11] was issued in its favor as the highest bidder.

In 2000, respondent demanded that Ramirez vacate the properties.^[12]

Ramirez sued respondent for annulment of sale and prayed that the certificate of sale be annulled on the ground, among others, that paragraph N of the real estate mortgage was violated for he was not notified of the foreclosure and auction sale.^[13]

In its answer, respondent claimed that the foreclosure proceedings were valid.

The trial court ruled that the extrajudicial foreclosure proceedings were null and void and the certificate of sale is invalid. The *fallo* of the Decision^[14] dated June 30, 2003 of the Regional Trial Court, Branch 193, Marikina City, in Civil Case No. 2001-701-MK reads:

Premises considered, judgment is hereby rendered in favor of the plaintiff [Ramirez] and against the defendant [bank], whose counterclaim is hereby dismissed, declaring the Certificate of Sale of the properties covered by TCT Nos. N-10722 and N-23033, as null and void and ordering the defendant [bank] to pay the following:

- 1) One Hundred Thousand (P100,000.00) Pesos as moral damages;
- 2) Fifty Thousand (P50,000.00) Pesos as exemplary damages;
- 3) Fifty Thousand (P50,000.00) Pesos as Attorney's fees; and
- 4) Costs of suit.

SO ORDERED.^[15]

The CA reversed the trial court's decision and ruled that absence of personal notice of foreclosure to Ramirez as required by paragraph N of the real estate mortgage is not a ground to set aside the foreclosure sale.^[16] The *fallo* of the assailed CA Decision reads:

WHEREFORE, the appealed decision dated June 30, 2003 of the Regional Trial Court of Marikina, Branch 193 is hereby **REVERSED** and **SET ASIDE**, and a new one is entered **AFFIRMING** the validity of the Certificate of Sale of the properties covering TCT Nos. N-10722 and N-23033.

SO ORDERED.^[17]

Ramirez's motion for reconsideration was denied in the assailed CA Resolution.

Hence, this petition raising a lone issue:

What is the legal effect of violating paragraph N of the deed of mortgage which requires personal notice to the petitioner-mortgagor by the respondent-mortgagee bank?^[18]

Ramirez insists that the auction sale as well as the certificate of sale issued to respondent are null and void since no notice of the foreclosure and sale by public auction was personally given to him in violation of paragraph N of the real estate mortgage which requires personal notice to him of said extrajudicial foreclosure.^[19]

In its comment, respondent counters that under Section 3 of Act No. 3135, no personal notice to the mortgagor is required in case of a foreclosure sale. The bank claims that paragraph N of the real estate mortgage does not impose an additional obligation to it to provide personal notice to the mortgagor Ramirez.^[20]

We agree with Ramirez and grant his petition.

The CA erred in ruling that absence of notice of extrajudicial foreclosure sale to Ramirez as required by paragraph N of the real estate mortgage will not invalidate the extrajudicial foreclosure sale. We rule that when respondent failed to send the notice of extrajudicial foreclosure sale to Ramirez, it committed a contractual breach of said paragraph N sufficient to render the extrajudicial foreclosure sale on September 8, 1994 null and void. Thus, we reverse the assailed CA Decision and Resolution.

In *Carlos Lim, et al. v. Development Bank of the Philippines*,^[21] we held that **unless the parties stipulate**, personal notice to the mortgagor in extrajudicial foreclosure proceedings is not necessary because Section 3 of Act No. 3135 only requires the posting of the notice of sale in three public places and the publication of that notice in a newspaper of general circulation. In this case, the parties stipulated in paragraph N of the real estate mortgage that all correspondence relative to the mortgage including notifications of extrajudicial actions shall be sent to mortgagor Ramirez at his given address. Respondent had no choice but to comply with this contractual provision it has entered into with Ramirez. The contract is the law between them. Hence, we cannot agree with the bank that paragraph N of the real estate mortgage does not impose an additional obligation upon it to provide personal notice of the extrajudicial foreclosure sale to the mortgagor Ramirez.

As we explained in *Metropolitan Bank v. Wong*,^[22] the bank's violation of paragraph N of the real estate mortgage is sufficient to invalidate the extrajudicial foreclosure sale:

[A] contract is the law between the parties and ... absent any showing that its provisions are wholly or in part contrary to law, morals, good customs, public order, or public policy, it shall be enforced to the letter by the courts. Section 3, Act No. 3135 reads:

"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 and city."

The Act only requires (1) the posting of notices of sale in three public places, and (2) the publication of the same in a newspaper of general

circulation. Personal notice to the mortgagor is not necessary. *Nevertheless*, the parties to the mortgage contract are not precluded from exacting additional requirements. In this case, petitioner and respondent in entering into a contract of real estate mortgage, agreed *inter alia*:

“all correspondence relative to this mortgage, including demand letters, summonses, subpoenas, or notifications of any judicial or extra-judicial action shall be sent to the MORTGAGOR....”

Precisely, the purpose of the foregoing stipulation is to apprise respondent of any action which petitioner might take on the subject property, thus according him the opportunity to safeguard his rights. When petitioner failed to send the notice of foreclosure sale to respondent, he committed a contractual breach sufficient to render the foreclosure sale on November 23, 1981 null and void.

We reiterated the *Wong* ruling in *Global Holiday Ownership Corporation v. Metropolitan Bank and Trust Company*^[23] and recently, in *Carlos Lim, et al. v. Development Bank of the Philippines*.^[24] Notably, all these cases involved provisions similar to paragraph N of the real estate mortgage in this case.

On another matter, we note that the trial court awarded moral and exemplary damages, attorney's fees and costs of suit to Ramirez. In granting said monetary awards, the trial court noted that if the bank followed strictly the procedure in the extrajudicial foreclosure of the real estate mortgage and had not filed prematurely an unlawful detainer case against Ramirez, he would not have been forced to litigate and incur expenses.^[25]

We delete aforesaid monetary awards, except the award of costs of suit. Nothing supports the trial court's award of moral damages. There was no testimony of any physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury^[26] suffered by Ramirez. The award of moral damages must be anchored on a clear showing that Ramirez actually experienced mental anguish, besmirched reputation, sleepless nights, wounded feelings or similar injury.^[27] Ramirez's testimony^[28] is also wanting as to the moral damages he suffered.

Similarly, no exemplary damages can be awarded since there is no basis for the award of moral damages and there is no award of temperate, liquidated or compensatory damages.^[29] Exemplary damages are imposed by way of example for the public good, in addition to moral, temperate, liquidated or compensatory damages.^[30]

We likewise delete the trial court's award of attorney's fees since the trial court failed to state in the body of its decision the factual or legal reasons for said award.^[31]

Indeed, even the instant petition^[32] does not offer any supporting fact or argument for us to affirm the award of moral and exemplary damages and attorney's fees.