

## SECOND DIVISION

[ G.R. No. 165575, February 02, 2011 ]

**ADELIA C. MENDOZA AND AS ATTORNEY-IN-FACT OF ALICE  
MALLETA, PETITIONERS, VS. UNITED COCONUT PLANTERS  
BANK, INC., RESPONDENT.**

### D E C I S I O N

**PERALTA, J.:**

This is a petition for review on *certiorari*<sup>[1]</sup> of the Court of Appeals' Resolution dated July 2, 2004, in CA-G.R. CV No. 79796, and its Resolution dated September 9, 2004, denying petitioners' motion for reconsideration. The Court of Appeals dismissed the Appellants' Brief filed by petitioners for failure to comply with the requirements under Section 13, Rule 44 of the 1997 Revised Rules of Civil Procedure.

The facts are as follows:

On November 5, 2001, petitioner Adelia Mendoza, attorney-in-fact of petitioner Alice Malleta, filed a Complaint<sup>[2]</sup> for annulment of titles, foreclosure proceedings and certificate of sale with the Regional Trial Court (RTC) of Lipa City, Fourth Judicial Region.

In their Complaint, herein petitioners stated that on October 6, 1995, they entered into a Real Estate Mortgage Contract with respondent United Coconut Planters Bank (UCPB) in the amount of P4,925,000.00.<sup>[3]</sup> On August 27, 1998, the properties were sold at public auction in the total amount of P31,300,00.00 to UCPB. On September 17, 2001, an Affidavit of Consolidation was executed by UCPB.

Petitioners contended that the foreclosure proceedings violated due process and the legal requirements under Act No. 3135, as amended, on the following grounds:

- a) There was no valid and legal notice to petitioner Adelia Mendoza of the foreclosure proceedings;
- b) There was no valid and legal notice of the auction sale;
- c) There was no valid and legal notice of the consolidation of ownership;
- d) There was no valid publication and notice as required by law;
- e) There was a violation of Republic Act No. 3765, "An Act to Require the Disclosure of Finance Charges in Connection with Extensions of Credit," specifically Section 6 of the law;

f) There was no clear and accurate financial statement showing the application of payments of the plaintiffs (petitioners herein); and

g) There was no valid letter of demand showing the clear finance charges.

Petitioners prayed that the foreclosure proceedings and Certificate of Sale be annulled, and that if ever any new title is issued in lieu of their Transfer Certificates of Titles,<sup>[4]</sup> the same should be cancelled and annulled; that respondent be ordered to pay petitioners attorney's fees of P50,000.00 and litigation expenses of P20,000.00.

In its Answer with Compulsory Counterclaim,<sup>[5]</sup> respondent UCPB denied that petitioners entered into a Real Estate Mortgage Contract with it in the amount of P4,925,000.00, the truth being that petitioner Adelia Mendoza executed several promissory notes in the total principal amount of P27,500,000.00, and to secure these obligations she executed, together with petitioner Alice Malleta, several real estate mortgages over several parcels of land in favor of UCPB.

Respondent denied that the foreclosure proceedings were legally defective, as the said proceedings were done in accordance with the provisions of Act No. 3135, as amended. It countered that the law does not require personal notice to the mortgagor of the foreclosure proceedings and the auction sale, as the publication of the notice of sale in a newspaper of general circulation constitutes constructive notice to the whole world. Moreover, there is no legal requirement of personal notice to the mortgagor of the consolidation of ownership, as the registration of the certificate of sale with the Register of Deeds constitutes notice to the whole world that the mortgagor or any interested party has one year from the date of such registration to redeem the foreclosed properties. Respondent claimed that it complied with the posting requirements, and that it had also complied with the provisions of Republic Act No. 3765 and had regularly furnished petitioners with statements of account pursuant to standard banking practice.

Respondent contended that petitioners knew that the foreclosure was forthcoming due to their default in the payment of their obligations. Petitioners had been sent several verbal and written demands to pay their obligations and had been warned that failure to settle their obligations would result in the foreclosure of their properties. Further, petitioners had one year from the date of registration of the certificate of sale to redeem their property, but they failed to do so.

Respondent denied that there was "non-disclosure of finance charges without lawful and legal demand," since it had regularly sent petitioners statements of account and had regularly given verbal and written notices to pay their obligations. It also denied the allegations of lack of reconciliation and verification of accounts. In this regard, respondent stated that petitioners could have easily verified their account with the account officers of UCPB, but they failed to do so.

As special and affirmative defenses, respondent stated that on August 9, 1994, petitioner Mendoza applied for and was granted a credit line in the amount of P25 million, which is supported by a Loan Agreement.<sup>[6]</sup> On October 9, 1995, the credit

line was increased by P2.5 million, as evidenced by a Loan Agreement.<sup>[7]</sup> Petitioner Mendoza availed of the said credit line in the aggregate principal amount of Twenty-Seven Million Five Hundred Thousand Pesos (P27.5 million) and executed promissory notes<sup>[8]</sup> therefor. Among other conditions, the promissory notes carried acceleration clauses, making these notes immediately due and payable even before maturity in case an event of default occurred, including, but not limited to, payment of principal and interest amortizations.

Moreover, respondent stated that on August 10, 1995, as partial security for the promissory notes, petitioner Malleta, through her attorney-in-fact, petitioner Adelia Mendoza, executed a real estate mortgage in favor of UCPB over several parcels of land registered under the name of Alice B. Malleta with the Register of Deeds of Lipa City. Later, pursuant to petitioner Mendoza's commitment with UCPB, the titles of the mortgaged properties were transferred under the name of Adelia B. Mendoza upon release of the loan proceeds and the mortgage annotation was carried over to the new titles.

According to respondent, on October 6, 1995, petitioner Mendoza executed a real estate mortgage over 12 parcels of land,<sup>[9]</sup> all registered in her name, as additional security for the said promissory notes.

Respondent stated that petitioner Mendoza failed to discharge her obligations under the promissory notes, despite written and verbal demands made by UCPB upon her, the latest of which was the demand letter dated January 29, 1998.<sup>[10]</sup> Hence, it had no other recourse but to initiate foreclosure proceedings on the aforementioned securities.

Respondent averred that on May 6, 1998, it filed a Petition<sup>[11]</sup> for Extrajudicial Foreclosure of the mortgaged properties before the *Ex Officio* Sheriff of Lipa City.

On July 21, 1998, the Sheriff prepared a Notice of Sale<sup>[12]</sup> and set the date of the public sale on August 27, 1998.<sup>[13]</sup> On July 28, 1998, the Sheriff posted the Notice of Sale in three public places and the Notice was, likewise, published in *Tambuling Batangas*, a newspaper of general circulation, on July 22 and 29, 1998, and on August 5, 1998. The certificate of posting and publisher's affidavit of publication were attached as Annexes "12,"<sup>[14]</sup> and "13,"<sup>[15]</sup> respectively.

The public sale was conducted on August 28, 1998. The mortgaged properties were sold in the amount of P31,300,000.00 to UCPB as the highest and winning bidder. A Certificate of Sale<sup>[16]</sup> was issued in favor of UCPB, which was duly registered in July 2000 at the back of the certificates of title of the mortgaged properties with the Register of Deeds of Lipa City.

Petitioners failed to redeem the foreclosed properties within the one-year redemption period that expired on July 21, 2001. Consequently, UCPB consolidated its ownership over the said properties and new certificates of title were issued under its name.

Respondent stated that on August 27, 1998, the date of the auction sale, petitioners' outstanding obligation was P58,692,538.63, as evidenced by a

Statement of Account.<sup>[17]</sup>

According to respondent, the proceeds of the foreclosure sale amounted to P31,300,000.00, leaving a deficiency of P27,392,538.63, an amount which it is entitled to payment from petitioner Mendoza, together with penalties and interest due thereon.

Respondent prayed that, after hearing, judgment be rendered (1) dismissing the Complaint for lack of merit; (2) on the counterclaim, ordering petitioners to pay the deficiency claim of P27,392,538.63, including the penalties and interests due thereon from August 27, 1998, and P1 million as attorney's fees and P200,000.00 as litigation expenses.

On March 25, 2003, respondent filed a Motion to Dismiss<sup>[18]</sup> for failure to prosecute. Respondent contended that petitioners, through counsel, received a copy of its Answer on August 26, 2002, as shown by the photocopy of the registry return receipt. It stated that under Section 1, Rule 18 of the 1997 Rules of Civil Procedure, petitioners have the positive duty to promptly set the case for pre-trial after the last pleading had been filed. It stated that the Answer was the last pleading, since petitioners failed to file a Reply thereon within the reglementary period.

Respondent stated that since August 26, 2002, or almost a period of six months, petitioners had not taken steps to set the case for pre-trial as mandated by the rules. Respondent submitted that the case should be dismissed for failure to prosecute for an unreasonable period of time as provided by Section 3, Rule 17 of the 1997 Rules of Civil Procedure. It asserted that failure to set the case for pre-trial for almost six (6) months is an unreasonable period of time, as a period of three (3) months had been found to constitute an unreasonable period of time in **Montejo v. Urotia**.<sup>[19]</sup>

Petitioners, through counsel Atty. Jose P. Malabanan, filed an *Opposition to the Motion to Dismiss and Motion to Set the Case for Pre-trial*,<sup>[20]</sup> and stated therein that their counsel on record is Atty. Monchito C. Rosales, who died on December 22, 2002; that Atty. Jose P. Malabanan forgot the case because of the death of Atty. Rosales (who is his law partner), and that he was setting the case for pre-trial. Petitioners prayed that the Opposition and motion to set the case for pre-trial be granted.

On April 15, 2003, the RTC of Lipa City, Branch 12 issued an Order<sup>[21]</sup> dismissing the case. The court found the Motion to Dismiss (for failure to prosecute) to be in accordance with the rules. It stated that the records of the case showed that since August 20, 2002, the issues in this case had already been joined, and that Atty. Monchito C. Rosales was still alive then, yet he did not take any step to have the case set for pre-trial. It found the claim of Atty. Jose P. Malabanan, that he forgot about the case because of the death of Atty. Rosales, as unpardonable, flimsy and an invalid excuse.

The Motion for Reconsideration of the Order dated April 15, 2003 was denied for lack of merit by the trial court in an Order dated May 26, 2003.<sup>[22]</sup>

Thereafter, petitioners appealed the trial court's Orders to the Court of Appeals, and filed an Appellant's Brief on April 5, 2004.

On May 20, 2004, respondent filed a Motion to Dismiss Appeal on the ground that the Appellant's Brief failed to comply with the requirements under Section 13, Rule 44 of the 1997 Rules of Civil Procedure. Respondent contended that the Appellant's Brief contained only the following topics: (1) Prefaratory Statement; (2) Statement of Facts and Antecedent Proceedings; (3) Parties; (4) Statement of the Case; (5) Issues; (6) Arguments/Discussion; and (7) Prayer. The Appellants' Brief did not have the following items: (1) A subject index of the matter in the brief with a digest of the arguments and page references, and a table of cases alphabetically arranged, textbooks and statutes cited with references to the pages where they are cited; (2) an assignment of errors; (3) on the authorities cited, references to the page of the report at which the case begins and page of the report on which the citation is found; (4) page references to the record in the Statement of Facts and Statement of the Case.

Respondent contended that the absence of a specific assignment of errors or of page references to the record in the Appellants' Brief is a ground for dismissal of the appeal under Section 1 (f), Rule 50 of the 1997 Rules of Civil Procedure.<sup>[23]</sup>

On June 4, 2004, petitioners filed an *Opposition to Motion to Dismiss Appeal*.<sup>[24]</sup> They contended that the assignment of errors were only designated as "Issues" in their Appellants' Brief; and although the designation of the "Assignment of Error" may vary, the substance thereof remains. Moreover, petitioners stated that the textbooks and statutes were cited immediately after the portion where they are quoted, which is more convenient and facilitates ready reference of the legal and jurisprudential basis of the arguments. They claimed that the absence of a subject index does not substantially deviate from the requirements of the Rules of Court, because one can easily go over the Appellants' Brief and can designate the parts with nominal prudence. They pointed out that Section 6 of the Rules of Court provides for a liberal construction of the Rules in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding.

On July 2, 2004, the Court of Appeals issued a Resolution dismissing the appeal. The dispositive portion of the Resolution reads:

WHEREFORE, in view of the foregoing, the defendant-appellee UCPB's Motion to Dismiss Appeal is hereby GRANTED. This appeal is ordered DISMISSED for failure to comply with Section 13, Rule 44 of the 1997 Revised Rules of Civil Procedure.<sup>[25]</sup>

The Court of Appeals held that the right to appeal is a statutory right and a party who seeks to avail of the right must faithfully comply with the rules. It found that the Appellants' Brief failed to comply with Section 13, Rule 44 of the 1997 Revised Rules of Civil Procedure, thus:

In this case, the plaintiff-appellant's brief failed to provide an index, like a table of contents, to facilitate the review of appeals by providing ready