

THIRD DIVISION

[G.R. No. 165408, January 15, 2010]

JAIME T. TORRES, PETITIONER, VS. CHINA BANKING CORPORATION, RESPONDENT.

DECISION

PERALTA, J.:

This is a petition for review on *certiorari*^[1] seeking to reverse, vacate and set aside the Court of Appeals' Decision dated March 23, 2001 in CA-G.R. CV No. 46261, its Entry of Judgment issued on November 30, 2001, and its Resolution dated September 10, 2004, denying petitioner's Motion to Set Aside Entry of Judgment and to Resolve Appellant's Motion for Reconsideration.

The facts, as culled from the decision of the trial court^[2] and the records, are as follows:

On August 27, 1986, petitioner Jaime T. Torres, as owner of St. James School, and respondent China Banking Corporation executed a mortgage agreement^[3] over parcels of land covered by Transfer Certificate of Title Nos. 58823 and 58822 to secure petitioner's loan in the amount of P4,600,000.00. The loan was evidenced by a Promissory Note^[4] dated August 22, 1986, which stated that the "loan was repayable within a period of five years with interest, payable monthly in arrears at 20 percent per annum commencing on September 22, 1986 until fully paid." The principal was payable in 16 equal quarterly amortizations of P287,500.00 each, commencing on November 23, 1987 until fully paid. The transaction was actually an assumption of the mortgage loan secured by the previous owners of the subject properties.

Thereafter, petitioner requested the restructuring of the loan. Petitioner first paid the amount of P200,000.00 and, later, the amount of P654,465.75 to complete compliance with the requirements to restructure the loan.

On November 29, 1988 and February 20, 1989, respondent sent petitioner demand letters to settle his overdue account of P4,600,000.00, exclusive of interest and penalties, rendering the obligation due and demandable; otherwise, respondent would extrajudicially foreclose the real estate mortgage.

In a letter^[5] dated February 20, 1989, respondent's Senior Vice-President informed petitioner that his partial payments of P200,000.00 and P654,465.75 made on October 6, 1988 and October 28, 1988, respectively, were applied to the interest on the loan. Respondent wrote:

x x x As stated in our letter dated January 18, 1989, your request for a restructuring of the subject loan after all interest are updated was not approved by the bank. All past due interest and quarterly installments on principal should be updated before we discuss any restructuring of the loan. For this reason, kindly update your quarterly installments and monthly interest payments within seven (7) days from receipt hereof, failing which, we shall extrajudicially foreclose pursuant to law the real estate mortgage executed by you in our favor to secure the said account and/or to take such other legal steps against you to effect collection.^[6]

On May 25, 1989, petitioner tendered another payment in the amount of P2,000,000.00, together with a letter stating that the amount was to update payment of petitioner's restructured account, and the excess amount to be applied to the principal balance, under Official Receipt No. 59845.^[7] Another payment was made on June 1, 1989 for P1,000,000.00 under Official Receipt No. 60084.^[8]

On June 6, 1989, respondent formally notified petitioner that since the latter refused to submit to the former the request for postponement of the auction sale of the property, scheduled on June 7, 1989, respondent would proceed with the auction sale.

On June 7, 1989, respondent caused the extrajudicial foreclosure and auction sale of the mortgaged properties. The Clerk of Court and *Ex Officio* Sheriff of Pasig, Metro Manila sold the properties at public auction for the sum of P2,466,217.38 to respondent as the highest bidder.^[9]

On November 23, 1989, petitioner filed an action for annulment of extrajudicial foreclosure sale and damages against respondent for the alleged illegal foreclosure of mortgage over the parcels of land covered by Transfer Certificate of Title Nos. (54986) 58823 and (54965) 58822, and the subsequent sale of the properties.

In its Answer,^[10] respondent stated that petitioner had no valid cause of action against it, since petitioner failed to pay his obligation in accordance with the terms of the promissory note, which rendered the entire principal of the promissory note due and demandable.

Moreover, respondent cited provisions in the promissory note and other loan documents, and informed the court that petitioner failed to pay monthly interest amortizations and quarterly principal amortizations. Instead of paying the same, petitioner formally requested respondent to restructure the subject loan. Respondent required petitioner to pay all past due interests and quarterly installments before loan restructuring could be discussed. However, respondent accepted the check payment of P2,000,000.00, which was applied to petitioner's loan interest up to January 14, 1988. Respondent stated that in the letter dated February 20, 1989, it formally informed petitioner that it never agreed to the restructuring of the loan for P4,600,000.00. Respondent also claimed that in its last letter dated February 28, 1989, it reiterated its position that the promissory note was due and demandable, and extrajudicial foreclosure would push through if full payment was not made within seven days. Respondent asserted that the foreclosure proceedings were conducted in accordance with the requirements of Act 3115, as

amended.

On May 30, 1990, petitioner tendered payment in the amount of P2,756,487.77 as redemption price of the foreclosed property.^[11] Respondent protested the tender of payment, maintaining that Section 78 of the General Banking Act applied in this case, not Section 30, Rule 39 of the Rules of Court; hence, the redemption price due as of May 30, 1990 should be P2,993,219.41, resulting in a deficient payment by petitioner in the sum of P236,731.64.

On September 29, 1993, the trial court rendered a Decision in favor of petitioner. It held that respondent acted in bad faith and deceit in foreclosing the subject properties after the offer for restructuring by petitioner, together with substantial payments made. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, in the light of the above facts, law and jurisprudence, judgment is hereby rendered in favor of plaintiff and against defendant, granting the following:

1. Declaring the extrajudicial foreclosure sale and the certificate of sale as null and void; and ordering defendant to return subject transfer certificate of title to plaintiff after complete payment of the loan account;
2. Declaring the penalty charges of 1/10 of 1% per day as void for being excessive and unconscionable; and considering the circumstances of this case, that in the computation of the remaining obligation of plaintiff with defendant Bank, the plaintiff is hereby ordered to pay only 12% interest per annum on the loan effective May 11, 1989 until complete payment;
3. Ordering defendant to pay plaintiff the amount of P500,000.00 as damages, as allowed under the Title XVIII on Damages in the New Civil Code; and
4. Ordering defendant to pay plaintiff the amount of P25,000.00 as attorney's fees.^[12]

Respondent appealed the trial court's decision to the Court of Appeals, raising the following assignments of error:

1. The lower court erred in holding that there was both novation in the legal sense and restructuring in the business sense of the subject loan account;
2. The lower court erred in declaring that the extrajudicial foreclosure sale and the certificate of sale were null and void;
3. The lower court erred in declaring that the penalty charges of 1/10 of 1% per day is both excessive and unconscionable and in ordering plaintiff

to pay only 12% interest per annum on the loan effective May 11, 1989;

4. The lower court erred in applying Rule 3^[9], Rules of Court when the law applicable was Sec. 78 of Republic Act No. 337;

5. The lower court erred in ordering China Banking Corporation to pay plaintiff P500,000.00 as damages and P25,000.00 as attorney's fees.^[13]

In a Decision dated March 23, 2001, the Court of Appeals disposed of the appeal, thus:

WHEREFORE, the decision appealed from is MODIFIED in that plaintiff is ORDERED to pay to defendant bank the balance of the redemption price of P2,993,219.41 with legal interest thereon at the rate of six (6) percent per annum effective May 30, 1990 until fully paid. The awards for damages and attorney's fees are DELETED.^[14]

The Court of Appeals found respondent's appeal to be partly meritorious. It disagreed with the trial court's finding that the foreclosure sale was null and void, because the trial court's conclusion that the foreclosure was premature and attended by bad faith was not supported by the facts of the case and the law on the matter.

According to the Court of Appeals, the records showed that petitioner had defaulted in paying his obligation, and petitioner's request for restructuring of the loan was denied;^[15] hence, respondent had the right to foreclose the mortgage. Since petitioner had already tendered the sum of P2,756,487.77 as redemption price for the foreclosed properties, the main issue tackled by the appellate court was the proper amount of the redemption price.

The Court of Appeals agreed with respondent that the redemption price should be P2,993,219.41, which was petitioner's outstanding balance as of May 30, 1990 after deducting his total payments amounting to P3,854,465.75. It also agreed with respondent that the applicable law was Section 78 of Republic Act No. 337, otherwise known as the *General Banking Act*, and not Rule 39 of the Rules of Court.

In support of its decision, the Court of Appeals cited *Sy v. Court of Appeals*^[16] which held that the General Banking Act partakes of the nature of an amendment to Act No. 3135 insofar as the redemption price is concerned, when the mortgagee is a bank or a banking or credit institution. *Sy v. Court of Appeals* stated that Section 78 of the General Banking Act,^[17] as amended, provides that the amount at which the subject property is redeemable is the amount due under the mortgage deed or the outstanding obligation of the obligor, plus interest and expenses.^[18]

The Court of Appeals also held that the award of damages was without factual and legal basis, since petitioner was at fault for not complying with the terms and conditions of the loan and his obligation was overdue; hence, his mortgage was foreclosed.

The appellate court further held that the award of attorney's fees was improper since the trial court failed to justify the grant of the award in its decision.

On April 20, 2001, petitioner, through his counsel of record, Atty. Salvador B. Britanico, filed a Motion for Reconsideration^[19] of the Decision dated March 23, 2001. On August 27, 2001, respondent filed a Comment^[20] on the motion for reconsideration. On November 5, 2001, the Court of Appeals issued a Resolution,^[21] which denied the motion for reconsideration for lack of merit. The Resolution became final and executory and an Entry of Judgment ^[22] was issued on November 30, 2001.

On July 10, 2002, almost eight months after the Entry of Judgment, Atty. Bonifacio A. Alentajan entered his appearance as counsel for petitioner.^[23] However, as stated by the Court of Appeals, the records of the case did not show that petitioner's counsel of record, Atty. Britanico of the S.B. Britanico Lisaca Lisaca Apelado Law Offices, had withdrawn from the case.^[24]

On March 19, 2003, petitioner, through Atty. Bonifacio A. Alentajan, filed a Motion to Set Aside Entry of Judgment and to Resolve Appellant's Motion for Reconsideration,^[25] alleging that the motion for reconsideration had yet to be resolved.

In a Resolution^[26] dated September 10, 2004, the Court of Appeals denied the motion for lack of merit. The appellate court held:

To reiterate, plaintiff-appellant's (petitioner's) motion for reconsideration filed by counsel of record Atty. Britanico had been resolved by this Court as early as November 5, 2001. A copy of this resolution was served upon Atty. Britanico at his office at No. R-502A Trinity Bldg., T.M. Kalaw St., Ermita on November 7, 2001 as evidenced by Registry Receipt No. 172-B, and was duly received by Ma. Leah Fanosa on November 14, 2001 as attested by Mr. Teodorico Uson Jr. of the Manila Central Post Office. Hence, **the entry of judgment stands.**

Well-settled is the rule that when a party is represented by counsel, notice should be made upon the **counsel of record** at his given address. Although Atty. Alentajan entered his appearance on behalf of plaintiff Torres, before a counsel of record (in this case, Atty. Britanico) may be considered relieved of his responsibility, he is required to file a formal petition manifesting his withdrawal from the case; without it, the notice of judgment served on the counsel of record is deemed notice to the client, the date of receipt of which is considered the starting point from which the period of appeal prescribed by law shall begin to run. Not having withdrawn formally as counsel in the case, Atty. Salvador Britanico continued to be the counsel for record and was, for all legal purposes, plaintiff-appellant's attorney upon whom the court's processes may be served, as they were in fact duly served.^[27]

Petitioner Torres filed this petition, raising these issues: