

SECOND DIVISION

[G.R. No. 170241, April 19, 2010]

**PHILIPPINE SAVINGS BANK, PETITIONER, VS. SPOUSES
DIONISIO GERONIMO AND CARIDAD GERONIMO,
RESPONDENTS.**

D E C I S I O N

CARPIO, J.:

The Case

This petition for review ^[1] assails the 30 August 2005 Decision^[2] and 3 November 2005 Resolution^[3] of the Court of Appeals in CA-G.R. CV No. 66672. The Court of Appeals reversed the decision of Branch 121 of the Regional Trial Court of Caloocan City, National Capital Region (trial court) by declaring void the questioned extrajudicial foreclosure of real estate mortgage for non-compliance with the statutory requirement of publication of the notice of sale.

The Facts

On 9 February 1995, respondents Spouses Dionisio and Caridad Geronimo (respondents) obtained a loan from petitioner Philippine Savings Bank (petitioner) in the amount of P3,082,000, secured by a mortgage on respondents' land situated in Barrio Talipapa, Caloocan City and covered by Transfer Certificate of Title No. C-50575.^[4] Respondents defaulted on their loan, prompting petitioner to initiate the extra-judicial foreclosure of the real estate mortgage. At the auction sale conducted on 29 March 1996, the mortgaged property was sold to petitioner,^[5] being the highest bidder, for P3,000,000. Consequently, a Certificate of Sale was issued in favor of petitioner.^[6]

Claiming that the extrajudicial foreclosure was void for non-compliance with the law, particularly the publication requirement, respondents filed with the trial court a complaint for the annulment of the extrajudicial foreclosure.^[7]

The trial court sustained the validity of the extrajudicial foreclosure, and disposed of the case as follows:

WHEREFORE, premises considered, the instant Complaint for Annulment of Foreclosure of Mortgage and Damages is hereby DISMISSED for lack of merit.

SO ORDERED.^[8]

On appeal, the Court of Appeals held:

WHEREFORE, the assailed decision dated 26 November 1999 of the Regional Trial Court of Caloocan City is REVERSED and SET ASIDE. The Extrajudicial Foreclosure of Mortgage conducted on 29 March 1996 is declared NULL and VOID.

SO ORDERED.^[9]

The Court of Appeals denied petitioner's motion for reconsideration.

Hence, this petition.

The Ruling of the Trial Court

The trial court held that "personal notice on the mortgagor is not required under Act No. 3135." All that is required is "the posting of the notices of sale for not less than 20 days in at least three public places in the municipality or city where the property is situated, and publication once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city, if the property is worth more than four hundred pesos."

The trial court further ruled there was compliance with the statutory publication requirement. Since the affidavit of publication was excluded as petitioner's evidence, the trial court relied instead on the positive testimony of Deputy Sheriff Alberto Castillo, that he caused the publication of the Notice of Sale, in holding there was publication of the notice of sale in a newspaper of general circulation. In relation to this, the trial court cited the presumption of regularity in the performance of official duty. The trial court found that respondents, as plaintiffs, failed to discharge their burden of proving petitioner's alleged non-compliance with the requisite publication. The trial court stated that the testimony of respondents' witness, a newsstand owner, "that he has never sold *Ang Pinoy* newspaper can never lead to the conclusion that such publication does not exist."

The Ruling of the Court of Appeals

The Court of Appeals reversed the ruling of the trial court.

The Court of Appeals found no sufficient evidence to prove that *Ang Pinoy* is a newspaper of general circulation in Caloocan City. In a Resolution dated 2 February 2005, the Court of Appeals required the then Executive Judge of the Regional Trial Court of Caloocan City to inform the appellate court of the following facts:

1. If *Ang Pinoy* newspaper is a newspaper of general circulation particularly for the years 1995 and 1996; and
2. If there was compliance with Sec. 2 of P.D. No. 1079 which provides:

"The executive judge of the court of first instance shall designate a regular working day and a definite time each week during which the said judicial notices or advertisements shall be distributed personally by him for publication to qualified newspapers or periodicals x x x, which distribution shall be done by raffle."^[10]

Executive Judge Victoria Isabel A. Paredes (Executive Judge Paredes) complied with the directive by stating that:

- a) Ang Pinoy newspaper is not an accredited periodical in Caloocan City. Hence, we are unable to categorically state whether it is a newspaper of general circulation at present or for the years 1995 and 1996 (Certification marked as Annex "A")
- b) Sec. 2, P.D. No. 1079 is being observed and complied with in that the raffle of judicial notices for publication, is a permanent agenda item in the regular raffle with the RTC, Caloocan City, holds every Monday at 2 o'clock in the afternoon at the courtroom of RTC, Branch 124 (Certification marked as Annex "B"); and
- c) We have no knowledge on whether Ang Pinoy was included in the raffles conducted in 1995 and 1996, as we do not have the case record where the information may be verified.^[11]

The Court of Appeals concluded that, based on the compliance of Executive Judge Paredes, *Ang Pinoy* is not a newspaper of general circulation in Caloocan City. Therefore, the extrajudicial foreclosure is void for non-compliance with the requirement of the publication of the notice of sale in a newspaper of general circulation.

The Issue

Basically, the issue in this case is whether the extra-judicial foreclosure is void for non-compliance with the publication requirement under Act No. 3135.

The Ruling of the Court

The petition lacks merit.

Section 3 of Act No. 3135^[12] reads:

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. (Emphasis supplied)

Petitioner claims that it complied with the above provision in foreclosing extrajudicially the subject real estate mortgage. To buttress its claim, petitioner presented the testimony of Deputy Sheriff Alberto Castillo of the trial court, the pertinent portion of which states:

ATTY. DAVIS:

Do you remember having come across a certain property owned by spouses Geronimo covered by TCT No. 50576 of the Register of Deeds of Caloocan City?

x x x
x

A. Yes, sir.

ATTY. DAVIS:

Q. In what connection?

A. In connection with the extra judicial foreclosure filed by the PS Bank, sir.

x x x
x

Q. When this was assigned to you what action did you take thereon?

A. I prepared the notice of sale having published in the newspaper which the executive judge awarded it. Sent notice to the said parties and posted it to the three conspicuous places of Caloocan City, sir.

Q. You mentioned about your issuance of Notice of Sale I am referring you now to the document previously marked as Exhibit "6." What relation is this if any to the one you have mentioned?

A. This is the Notice of Sale I have prepared, sir.

Q. Now you also mentioned that you have caused the publication of this Notice of Sheriff's Sale to a newspaper of general circulation, do you remember what newspaper it was?

A. Ang Pinoy, sir.

Q. How come that this newspaper was selected for purposes of publication?

A. It was the executive judge who awarded that publication, sir.

Q. How do you know particularly that this notice was published in the newspaper?