

FIRST DIVISION

[G.R. No. 167500, October 17, 2008]

K-PHIL., INC., SOO MYUNG PARK AND NETWORK DEVELOPMENT HOLDING CORP., PETITIONERS, VS. METROPOLITAN BANK & TRUST COMPANY, REGALADO E. EUSEBIO, IN HIS CAPACITY AS CLERK OF COURT VI AND EX-OFFICIO SHERIFF, AND REYNALDO R. CAMERINO, IN HIS CAPACITY AS SHERIFF IV, REGIONAL TRIAL COURT OF IMUS, CAVITE, RESPONDENTS.

DECISION

CORONA, J.:

This petition^[1] seeks the reversal of the March 16, 2005 decision^[2] of the Court of Appeals (CA) in CA-G.R. CV No. 80787.

In October 1996, respondent Metropolitan Bank & Trust Company (Metrobank) extended to petitioner K-Phil., Inc. (K-Phil) various loans and credit accommodations. These loans were secured by a mortgage^[3] over two lots owned by petitioner Network Development Holding Corporation (Network) and occupied by K-Phil.^[4] In addition, K-Phil also executed a deed of chattel mortgage^[5] over its machineries and equipment.

Because of petitioners' alleged violation of the terms and conditions of the loans, Metrobank filed a petition for extrajudicial foreclosure of real estate and chattel mortgage with the Office of the Clerk of Court and *ex-officio* sheriff (respondent Regalado E. Eusebio) of the Regional Trial Court (RTC) of Imus, Cavite on June 25, 2002.^[6]

On July 1, 2002, upon approval by RTC Executive Judge Lucenito N. Tagle^[7] of Imus, Cavite, respondent sheriff Reynaldo R. Camerino issued a notice of extrajudicial sale setting the date of the public auction sale on August 8, 2002.^[8]

On August 2, 2002, petitioners filed a complaint for breach of contract and damages with application for a writ of preliminary injunction and/or temporary restraining order (TRO) in the RTC, Branch 20 of Imus, Cavite docketed as Civil Case No. 2634-01. They claimed that the foreclosure of mortgages was premature and in contravention of a restructuring agreement of the loans and obligations of K-Phil. In addition, the petition for extrajudicial foreclosure was defective because it indicated the wrong amount and failed to implead and notify Network, an indispensable party as owner-mortgagor of the subject lots. Furthermore, the venue of the auction sale in Imus, Cavite was inconsistent with the express stipulation of the real estate mortgage that the auction sale was to be held at the capital of the province, Trece Martires City, or in the city where the property is located, Dasmariñas, Cavite.^[9]

On August 5, 2002, the RTC issued an *ex parte* TRO enjoining respondents from proceeding with the scheduled public auction.^[10]

After hearing the parties, the RTC granted petitioners a writ of preliminary injunction further enjoining respondents from continuing with the auction sale upon the filing of a P2,000,000 bond.^[11]

On October 18, 2002, K-Phil moved for authority to sell the spinning machines/accessories, the subject of the chattel mortgage, for US\$228,000. The RTC granted the motion and ordered that the proceeds of the sale be delivered directly to Metrobank as partial payment of K-Phil's obligations.^[12]

After trial, the RTC rendered its decision dated November 19, 2003 dismissing petitioners' complaint. It held that there was no infirmity whatsoever in the petition because Network's name, though not appearing in the caption, was clearly stated and identified in the body of the petition. The RTC further ruled that mere irregularities in the petition or in the notice of sale which did not prejudice any of the parties did not justify the setting aside of the foreclosure sale. Besides, petitioners were duly notified of the venue of the sale and the sale was within the territorial jurisdiction of the court. The RTC also found no basis to award damages because no wrongful act was committed by Metrobank as mortgagee.^[13]

Aggrieved, petitioners elevated the case to the CA. Meanwhile, in its exercise of residual jurisdiction, the RTC ordered the parties to refrain from continuing with the public auction.^[14]

In its decision,^[15] the CA agreed with the RTC that the failure to include the name of Network in the caption of the petition for foreclosure was not a fatal error. It was sufficient that Network was identified as the owner of the mortgaged real properties in the body of the petition (which was the controlling portion of said pleading) and that, in the notice, the name of Network was clearly stated in the caption as mortgagor.

However, the CA noted Metrobank's admission that the balance due on the principal amount was P143,335,891, subject to 6% interest, and that petitioners had in the meantime made payments on their loans.^[16] Therefore, the payments should have been deducted from the principal of P143,335,891. Considering this, the CA observed that the petition and notice were pegged differently at P159,026,257.49.

The CA also pronounced that, under the law and the stipulations provided in the mortgage contract, the auction sale should be held either in Dasmariñas, Cavite, where the mortgaged properties are located, or in Trece Martires City, the capital city of the province of Cavite, not in Imus, Cavite.

Because of the variance in the amount of the outstanding indebtedness stated in the petition and that in the notice, as well as the improper venue of the auction sale, the CA held:

WHEREFORE, premises considered, the Notice of Extra-Judicial Sale is hereby SET ASIDE. The Office of the Sheriff of the [RTC] of Imus, Cavite is hereby ordered to issue, publish and serve, in accordance with law, a

new Notice of Extra-Judicial Sale correcting all the inaccuracies and inadequacies pointed out in the decision of the Court. Foreclosure proceedings shall thereafter proceed in the manner provided by law, under the control of the Executive Judge of the Imus, Cavite RTC.^[17]

Unsatisfied with this ruling, petitioners filed this petition raising the following issues: (1) whether the petition for extrajudicial foreclosure was null and void for its failure to implead Network and to state the correct amount of indebtedness;^[18] (2) whether it was proper to order the issuance of a new notice with the necessary corrections and (3) whether Metrobank was liable for damages.

Petitioners contend that the CA erred when it upheld the validity of the petition despite the incorrect amount stated therein and the omission of Network as a party. They also assert that the duty to alter, modify or amend the petition rests on Metrobank, not on respondent sheriffs whose duty to issue the notice based on the petition is ministerial. Hence, it was an error for the CA to order respondent sheriffs to issue a new notice to amend the inaccuracies of the petition. Moreover, petitioners insist that they are entitled to damages and attorney's fees as they have established Metrobank's bad faith when it prematurely filed the petition against K-Phil.

The petition lacks merit.

Network's name was indeed omitted from the caption of the application/petition for extrajudicial foreclosure. However, this omission was not fatal to Metrobank's application as it was not in violation of Act 3135.^[19] Moreover, the application included Network in its body. It is the allegations in the body of the petition that control and not the heading or caption.^[20] The notice clearly identified Network as the mortgagor. Such identification in the notice of extrajudicial sale was what counted under the rules of procedure in extrajudicial foreclosure of mortgage.^[21]

As for the amount of indebtedness, Metrobank alleged the amount of P159,026,257.49 in its petition; it was only in the course of the proceedings that it agreed to the amount of P143,335,891. Consequently, the notice (which was based on the petition) also stated P159,026,257.49 as the amount of indebtedness.

It is a well-settled rule that statutory provisions^[22] governing publication of notice of mortgage foreclosure sales must be strictly complied with and that even slight deviations therefrom will invalidate the notice.^[23] The reason was explained in *Olizon v. CA*:^[24]

The object of a notice of sale is to inform the public of the nature and condition of the property to be sold, and of the time, place and terms of the sale. Notices are given for the purpose of securing bidders and to prevent a sacrifice of the property. If these objects are attained, immaterial errors and mistakes will not affect the sufficiency of the notice; but if mistakes or omissions occur in the notices of sale, which are calculated to deter or mislead bidders, to depreciate the value of the property, or to prevent it from bringing a fair price, such mistakes or omissions will be fatal to the validity of the notice, and also to the sale made pursuant thereto.^[25]