

THIRD DIVISION

[G.R. NO. 170215, August 28, 2007]

**SPS. ESMERALDO AND ELIZABETH SUICO, PETITIONERS, VS.
PHILIPPINE NATIONAL BANK AND HON. COURT OF APPEALS,
RESPONDENTS.**

D E C I S I O N

CHICO-NAZARIO, J.:

Herein petitioners, Spouses Esmeraldo and Elizabeth Suico, obtained a loan from the Philippine National Bank (PNB) secured by a real estate mortgage^[1] on real properties in the name of the former. The petitioners were unable to pay their obligation prompting the PNB to extrajudicially foreclose the mortgage over the subject properties before the City Sheriff of Mandaue City under EJF Case No. 92-5-15.

The petitioners thereafter filed a Complaint against the PNB before the Regional Trial Court (RTC) of Mandaue City, Branch 55, docketed as Civil Case No. MAN-2793 for Declaration of Nullity of Extrajudicial Foreclosure of Mortgage.^[2]

The Complaint alleged that on 6 May 1992, PNB filed with the Office of the Mandaue City Sheriff a petition for the extrajudicial foreclosure of mortgage constituted on the petitioners' properties (subject properties) for an outstanding loan obligation amounting to P1,991,770.38 as of 10 March 1992. The foreclosure case before the Office of the Mandaue City Sheriff, which was docketed as EJF Case No. 92-5-15, covered the following properties:

TCT NO. 13196

"A parcel of land (Lot 701, plan 11-5121 Amd-2) situated at Mandaue City, bounded on the NE., and SE., by lot no. 700; on the SW. by lots nos. 688 and 702; on the NW. by lot no. 714, containing an area of 2,078 sq. m. more or less."

TAX DECL. NO. 00553

"A parcel of land situated at Tabok, Mandaue City, Cad. Lot No. 700-C-1; bounded on the North by Lot No. 701 & 700-B; on the South by Lot No. 700-C-3; on the East by lot no. 700-C-3 and on the West by Lot no. 688, containing an area of 200 square meters, more or less."

TAX DECL. NO. 00721

"Two (2) parcels of land situated at Tabok, Mandaue City, Cad. lot nos. 700-C-3 and 700-C-2; bounded on the North by Lot Nos. 700-C-1 and

700-B; on the South by Lot No. 700-D; on the East by Lot Nos. 695 and 694; and on the West by Lot Nos. 688 and 700-C-1, containing an aggregate area of 1,683 sq. m. more or less."

TAX DECL. NO. 0237

"A parcel of land situated at Tabok, Mandaue City, Cad. Lot no. 700-B. Bounded on the NE. by (Lot 699) 109, (Lot No. 69) 110, on the SE (Lot 700-C) 115, on the NW. (Lot 700-A) 112 and on the SW. (Lot 701) 113; containing an area of .1785 HA more or less."

TAX DECL. NO. 9267

"A parcel of land situated at Tabok, Mandaue City, Cad. Lot no. 700-A. Bounded on the NE. by (Lot 699) 109, on the South West by (Lot 701) 113, on the SE. by (Lot 700-B) 111, and on the NW. by (lot 714) 040039; containing an area of .1785 HA more or less."^[3]

Petitioners claimed that during the foreclosure sale of the subject properties held on 30 October 1992, PNB, as the lone bidder, offered a bid in the amount of P8,511,000.00. By virtue of the said bid, a Certificate of Sale of the subject properties was issued by the Mandaue City Sheriff in favor of PNB. PNB did not pay to the Sheriff who conducted the auction sale the amount of its bid which was P8,511,000.00 or give an accounting of how said amount was applied against petitioners' outstanding loan, which, as of 10 March 1992, amounted only to P1,991,770.38. Since the amount of the bid grossly exceeded the amount of petitioners' outstanding obligation as stated in the extrajudicial foreclosure of mortgage, it was the legal duty of the winning bidder, PNB, to deliver to the Mandaue City Sheriff the bid price or what was left thereof after deducting the amount of petitioners' outstanding obligation. PNB failed to deliver the amount of their bid to the Mandaue City Sheriff or, at the very least, the amount of such bid in excess of petitioners' outstanding obligation.

One year after the issuance of the Certificate of Sale, PNB secured a Certificate of Final Sale from the Mandaue City Sheriff and, as a result, PNB transferred registration of all the subject properties to its name.

Owing to the failure of PNB as the winning bidder to deliver to the petitioners the amount of its bid or even just the amount in excess of petitioners' obligation, the latter averred that the extrajudicial foreclosure conducted over the subject properties by the Mandaue City Sheriff, as well as the Certificate of Sale and the Certificate of Finality of Sale of the subject properties issued by the Mandaue City Sheriff, in favor of PNB, were all null and void.

Petitioners, in their Complaint in Civil Case No. MAN-2793, prayed for:

- a) Declaring the Nullity of Extra-judicial Foreclosure of Mortgage under EJP Case No. 92-5-15 including the certificate of sale and the final deed of sale of the properties affected;
- b) Order[ing] the cancellation of the certificates of titles and tax declaration already in the name of [herein respondent] PNB and revert

the same back to herein [petitioners'] name;

c) Ordering the [PNB] to pay [petitioners] moral damages amounting to more than P1,000,000.00; Exemplary damages of P500,000.00; Litigation expenses of P100,000.00 and attorney's fees of P300,000.00.

[4]

PNB filed a Motion to Dismiss^[5] Civil Case No. MAN-2793 citing the pendency of another action between the same parties, specifically Civil Case No. CEB-15236 before the RTC of Cebu City entitled, *PNB v. Sps. Esmeraldo and Elizabeth Suico* where PNB was seeking the payment of the balance of petitioners' obligation not covered by the proceeds of the auction sale held on 30 October 1992. PNB argued that these two cases involve the same parties. Petitioners opposed the Motion to Dismiss filed by PNB.^[6] Subsequently, the Motion to Dismiss Civil Case No. MAN-2793 was denied in the Order of the RTC dated 15 July 1997;^[7] thus, PNB was constrained to file its Answer.^[8]

PNB disputed petitioners' factual narration. PNB asserted that petitioners had other loans which had likewise become due. Petitioners' outstanding obligation of P1,991,770.38 as of 10 March 1992 was exclusive of attorney's fees, and other export related obligations which it did not consider due and demandable as of said date. PNB maintained that the outstanding obligation of the petitioners under their regular and export- related loans was already more than the bid price of P8,511,000.00, contradicting the claim of surplus proceeds due the petitioners. Petitioners were well aware that their total principal outstanding obligation on the date of the auction sale was P5,503,293.21.

PNB admitted the non-delivery of the bid price to the sheriff and the execution of the final deed of sale, but claimed that it had not transferred in its name all the foreclosed properties because the petition to register in its name Transfer Certificates of Title (TCT) No. 37029 and No. 13196 were still pending.

On 2 February 1999, the RTC rendered its Decision^[9] in Civil Case No. MAN-2793 for the declaration of nullity of the extrajudicial foreclosure of mortgage, the dispositive portion of which states:

WHEREFORE, based on the foregoing, judgment is rendered in favor of [herein petitioners] Sps. Esmeraldo & Elizabeth Suico and against [herein respondent], Philippine National Bank (PNB), declaring the nullity of Extrajudicial Foreclosure of Mortgage under EJP Case No. 92-5-15, including the certificate of sale and the final deed of sale of the subject properties; ordering the cancellation of the certificates of titles and tax declaration already in the name of [respondent] PNB, if any, and revert the same back to the [petitioners'] name; ordering [respondent] PNB to cause a new foreclosure proceeding, either judicially or extra-judicially.

Furnish parties thru counsels copy of this order.^[10]

In granting the nullification of the extrajudicial foreclosure of mortgage, the RTC reasoned that given that petitioners had other loan obligations which had not yet matured on 10 March 1992 but became due by the date of the auction sale on 30

October 1992, it does not justify the shortcut taken by PNB and will not excuse it from paying to the Sheriff who conducted the auction sale the excess bid in the foreclosure sale. To allow PNB to do so would constitute fraud, for not only is the filing fee in the said foreclosure inadequate but, worse, the same constitutes a misrepresentation regarding the amount of the indebtedness to be paid in the foreclosure sale as posted and published in the notice of sale.^[11] Such misrepresentation is fatal because in an extrajudicial foreclosure of mortgage, notice of sale is jurisdictional. Any error in the notice of sale is fatal and invalidates the notice.^[12]

When the PNB appealed its case to the Court of Appeals,^[13] the appellate court rendered a Decision^[14] dated 12 April 2005, the fallo of which provides:

WHEREFORE, premises considered, the instant appeal is GRANTED. The questioned decision of the Regional Trial Court of Mandaue City, Branch 55 dated February 2, 1999 is hereby REVERSED and SET ASIDE. Accordingly, the extra judicial foreclosure of mortgage under EJP 92-5-15 including the certificate of sale and final deed of sale executed appurtenant thereto are hereby declared to be valid and binding.^[15]

In justifying reversal, the Court of Appeals held:

A careful scrutiny of the evidence extant on record would show that in a letter dated January 12, 1994, [petitioners] expressly admitted that their outstanding principal obligation amounted to P5.4 Million and in fact offered to redeem the properties at P6.5 Million. They eventually increased their offer at P7.5 Million as evidenced by that letter dated February 4, 1994. And finally on May 16, 1994, they offered to redeem the foreclosed properties by paying the whole amount of the obligation by installment in a period of six years. All those offers made by the [petitioners] not only contradicted their very assertion that their obligation is merely that amount appearing on the petition for foreclosure but are also indicative of the fact that they have admitted the validity of the extra judicial foreclosure proceedings and in effect have cured the impugned defect. Thus, for the [petitioners] to insist that their obligation is only over a million is unworthy of belief. Oddly enough, it is evident from their acts that they themselves likewise believe otherwise.

Even assuming that indeed there was a surplus and the [PNB] is retaining more than the proceeds of the sale than it is entitled, this fact alone will not affect the validity of the sale but simply gives the [petitioners] a cause of action to recover such surplus. In fine, the failure of the [PNB] to remit the surplus, if any, is not tantamount to a non-compliance of statutory requisites that could constitute a jurisdictional defect invalidating the sale. This situation only gives rise to a cause of action on the part of the [petitioners] to recover the alleged surplus from the [PNB]. This ruling is in harmony with the decisional rule that in suing for the return of the surplus proceeds, the mortgagor is deemed to have affirmed the validity of the sale since nothing is due if no valid sale has been made. ^[16]

Petitioners filed a Motion for Reconsideration^[17] of the foregoing Decision, but the Court of Appeals was not persuaded. It maintained the validity of the foreclosure sale and, in its Amended Decision dated 28 September 2005, it merely directed PNB to pay the deficiency in the filing fees, holding thus:

WHEREFORE, Our decision dated April 12, 2005 is hereby AMENDED. [Herein respondent PNB] is hereby required to pay the deficiency in the filing fees due on the petition for extra judicial foreclosure sale to be based on the actual amount of mortgage debts at the time of filing thereof. In all other respects, Our decision subject of herein petitioners'] motion for reconsideration is hereby AFFIRMED.^[18]

Unflinching, petitioners elevated the case before this Court via the present Petition for Review essentially seeking the nullification of the extrajudicial foreclosure of the mortgage constituted on the subject properties. Petitioners forward two reasons for declaring null and void the said extrajudicial foreclosure: (1) the alleged defect or misrepresentation in the notice of sheriff's sale; and/or (2) failure of PNB to pay and tender the price of its bid or the surplus thereof to the sheriff.

Petitioners argue that since the Notice of Sheriff's Sale stated that their obligation was only P1,991,770.38 and PNB bidded P8,511,000.00, the said Notice as well as the consequent sale of the subject properties were null and void.

It is true that statutory provisions governing publication of notice of mortgage foreclosure sales must be strictly complied with, and that even slight deviations therefrom will invalidate the notice and render the sale at least voidable.^[19] Nonetheless, we must not also lose sight of the fact that the purpose of the publication of the Notice of Sheriff's Sale is to inform all interested parties of the **date, time** and **place** of the foreclosure sale of the real property subject thereof. Logically, this not only requires that the correct date, time and place of the foreclosure sale appear in the notice, but also that any and all interested parties be able to **determine** that what is about to be sold at the foreclosure sale is the **real property** in which they have an interest.^[20]

Considering the purpose behind the Notice of Sheriff's Sale, we disagree with the finding of the RTC that the discrepancy between the amount of petitioners' obligation as reflected in the Notice of Sale and the amount actually due and collected from the petitioners at the time of the auction sale constitute fraud which renders the extrajudicial foreclosure sale null and void.

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.^[21]

All these considered, we are of the view that the Notice of Sale in this case is valid. Petitioners failed to convince this Court that the difference between the amount stated in the Notice of Sale and the amount of PNB's bid resulted in discouraging or misleading bidders, depreciated the value of the property or prevented it from