

FIRST DIVISION

[G.R. NO. 164910, September 30, 2005]

**UNION BANK OF THE PHILIPPINES, PETITIONER, VS. HON.
COURT OF APPEALS AND D'ROSSA, INCORPORATED,
RESPONDENTS.**

DECISION

YNARES-SANTIAGO, J.:

This petition for review on certiorari^[1] seeks to set aside the February 23, 2004 Decision^[2] of the Court of Appeals in CA-G.R. CV No. 66407 which reversed and set aside the Decision^[3] of the Regional Trial Court of Makati City, Branch 141 in Civil Case No. 96-1053; and its August 13, 2004,^[4] resolution denying reconsideration thereof.

In a memorandum of agreement dated May 27, 1992, D'Rossa Incorporated (DRI) agreed to mortgage its parcels of land covered by TCT Nos. S-24740 and S-24747 in favor of Union Bank of the Philippines (Union Bank) as security for the credit facility of Josephine Marine Trading Corporation (JMTC). JMTC availed P3 million from the credit line.

Subsequently, Union Bank increased the credit facility of JMTC to P27 million, from which JMTC availed US\$700,503.64 or P18,318,170.18. Upon JMTC's failure to pay its obligation, Union Bank instituted foreclosure proceedings on DRI's properties.

On September 20, 1996, DRI's properties were auctioned where Union Bank was declared the highest bidder for P15,300,000.00.^[5]

On February 26, 1997, DRI filed a supplemental complaint seeking to declare the public sale as null. It claimed that its liability is only P3 million which was the liability incurred by JMTC under its first agreement with Union Bank. However, Union Bank alleged that DRI was liable to JMTC's total outstanding obligations, regardless of whether it was incurred during or subsequent to the first agreement.

On December 27, 1999, the trial court rendered its decision, the dispositive portion of which states:

WHEREFORE, the complaint is hereby dismissed for lack of merit. The plaintiff is ordered to pay the defendant UBP, the sum of P250,000.00 as and for attorney's fees and the costs.

SO ORDERED.^[6]

On appeal, the Court of Appeals reversed the decision of the trial court. While it upheld Union Bank's right to foreclose, it found that DRI's mortgage liability is

pegged at P3 million and which was later amended and increased to P8.61 million. It ruled that DRI could not be held liable for more than P8.61 million^[7] even if JMTC availed more than this amount. It also noted that the date of the public sale as contained in the notice varies with the actual date of sale. As such, it declared as null the foreclosure sale because a foreclosure sale carried out on a day different from the published notice is a total nullity.^[8]

The dispositive portion of the Court of Appeals' decision reads:

WHEREFORE, the appealed Decision is REVERSED and SET ASIDE, and another is RENDERED:

- (a) Declaring appellant DRI's mortgage liability to be P8.61 Million only;
- (b) Declaring the foreclosure of appellant DRI's properties covered by TCTs No. S-24740 and No. S-24747 NULL and VOID *ab initio*;
- (c) Ordering the Register of Deeds of Rizal or Makati City to CANCEL appellee UBP's TCTs No. 212659 and No. 212660, and to RESTORE appellant DRI's TCTs No. S-24740 and No. S-24747; and
- (d) Ordering the appellee UBP to PAY appellant DRI P100,000.00 for and as attorney's fees plus the costs of suit.

SO ORDERED.^[9]

Union Bank's motion for reconsideration was denied hence this petition raising the following issues:^[10]

I.

Whether or not the Court of Appeals through its former Special Eleventh Division committed reversible error in declaring as null and void the foreclosure sale of private respondent D'Rossa's mortgaged properties then covered by TCT Nos. S-24740 and S-24747 notwithstanding its earlier ruling through the former Fifth Division in CA-G.R. SP No. 41694 sustaining the validity of the very same foreclosure proceedings covering the exact same properties.

II.

Whether or not the Court of Appeals committed reversible error when it held that there was a "variance" between the notice regarding the date of foreclosure on 22 July 1996 and that of the actual date of foreclosure sale covering the same real properties on 20 September 1996.

III.

Whether or not the Court of Appeals committed reversible error when it held that D'Rossa's liability to Union Bank is limited to only P8.61 Million even though the actual bid price tendered by Union Bank at the foreclosure sale of D'Rossa's mortgaged properties to cover the unpaid

obligation of the borrower amounted to P15.3 Million.

IV.

Whether or not the Court of Appeals committed reversible error when in holding as null and void the foreclosure of the mortgaged properties then covered by TCT Nos. S-24740 and S-24747 notwithstanding the earlier ruling of Honorable Court of Appeals, Fifth (5th) Division in CA-G.R. SP No. 41694 sustaining the validity of the very same foreclosure proceedings herein involved covering the same properties.

V.

Whether or not the Court of Appeals committed reversible error in ordering the cancellation of TCT Nos. 212659 and 212660 now registered under the name of petitioner Union Bank and the corresponding restoration of D'Rossa's TCT Nos. S-24740 and S-24747.

VI.

Whether or not the Court of Appeals committed reversible error in holding petitioner Union Bank liable for attorney's fees and costs of suit.

The foregoing issues can be summed up into: (a) whether the Court of Appeals erred in holding that the liability of DRI is limited only to P8.61 million; and (b) whether the Court of Appeals erred in finding the foreclosure sale of DRI's mortgaged properties as null for lack of republication of the notice of sale.

The pertinent provisions of the Real Estate Mortgage provide:

Section 1. Secured Obligations. – The obligations secured by this Mortgage (the "Secured Obligations") are the following:

a) All the obligations of the Borrower and/or the Mortgagor under: (i) the Notes, the Agreement and this Mortgage; (ii) *any and all instruments or documents issued upon the renewal, extension, amendment or novation of the Notes, the Agreement and this Mortgage, irrespective of whether such obligations as renewed, extended, amended or novated are in the nature of new, separate or additional obligations*; and (iii) any and all instruments or documents issued pursuant to the Notes, the Agreement and this Mortgage;

b) All other obligations of the Borrower and/or the Mortgagor in favor of the Mortgagee, *whether presently owing or hereinafter incurred* and whether or not arising from or connected with the Agreement, the Notes and/or this Mortgage; and

c) *Any and all expenses which may be incurred in collecting any and all of the above* and in enforcing any and all rights, powers and remedies of the Mortgagee under this Mortgage.^[11] (Emphasis supplied)