

## FIRST DIVISION

[ G.R. No. 125838, June 10, 2003 ]

**DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS.  
COURT OF APPEALS AND EMERALD RESORT HOTEL  
CORPORATION, RESPONDENTS.**

### D E C I S I O N

**CARPIO, J.:**

#### The Case

This petition for review on *certiorari*<sup>[1]</sup> seeks to reverse the Joint Decision<sup>[2]</sup> of the Court of Appeals in CA-G.R. CV Nos. 38569 and 38604 dated 31 January 1996 and the Resolution dated 30 July 1996 denying the motion for reconsideration. The Court of Appeals affirmed the Decision<sup>[3]</sup> of the Regional Trial Court of Iriga City, Branch 36, declaring the foreclosure of the mortgaged properties void for failure to comply with the statutory requisites.

#### The Facts

Private respondent Emerald Resort Hotel Corporation ("ERHC") obtained a loan from petitioner Development Bank of the Philippines ("DBP"). DBP released the loan of P3,500,000.00 in three installments: P2,000,000.00 on 27 September 1975, P1,000,000.00 on 14 June 1976 and P500,000.00 on 14 September 1976. To secure the loan, ERHC mortgaged its personal and real properties to DBP.

On 18 March 1981, DBP approved a restructuring of ERHC's loan subject to certain conditions.<sup>[4]</sup> On 25 August 1981, DBP allegedly cancelled the restructuring agreement for ERHC's failure to comply with some of the material conditions<sup>[5]</sup> of the agreement.

Subsequently, ERHC delivered to DBP three stock certificates of ERHC aggregating 3,477,052 shares with a par value of P1.00 per share. ERHC first delivered to DBP on 20 October 1981 Stock Certificate No. 30 covering 1,862,148 shares. Then ERHC delivered on 3 November 1981 Stock Certificate No. 31 covering 691,052 shares, and on 27 November 1981 Stock Certificate No. 32 covering 923,852 shares.

On 5 June 1986, alleging that ERHC failed to pay its loan, DBP filed with the Office of the Sheriff, Regional Trial Court of Iriga City, an Application for Extra-judicial Foreclosure of Real Estate and Chattel Mortgages.

Deputy Provincial Sheriffs Abel Ramos and Ruperto Galeon issued the required notices of public auction sale of the personal and real properties. However, Sheriffs Ramos and Galeon failed to execute the corresponding certificates of posting of the

notices. On 10 July 1986, the auction sale of the personal properties proceeded.

The Office of the Sheriff scheduled on 12 August 1986 the public auction sale of the real properties. The *Bicol Tribune* published on 18 July 1986, 25 July 1986 and 1 August 1986 the notice of auction sale of the real properties. However, the Office of the Sheriff postponed the auction sale on 12 August 1986 to 11 September 1986 at the request of ERHC. DBP did not republish the notice of the rescheduled auction sale because DBP and ERHC signed an agreement to postpone the 12 August 1986 auction sale.<sup>[6]</sup> ERHC, however, disputes the authority of Jaime Nuevas who signed the agreement for ERHC.

In a letter dated 24 November 1986, ERHC informed DBP of its intention to lease the foreclosed properties.<sup>[7]</sup>

On 22 December 1986, ERHC filed with the Regional Trial Court of Iriga City a complaint for annulment of the foreclosure sale of the personal and real properties. Subsequently, ERHC filed a Supplemental Complaint. ERHC alleged that the foreclosure was void mainly because (1) DBP failed to comply with the procedural requirements prescribed by law; and (2) the foreclosure was premature. ERHC maintained that the loan was not yet due and demandable because the DBP had restructured the loan.

DBP moved to dismiss the complaint because it stated no cause of action and ERHC had waived the alleged procedural defenses. The trial court denied the motion to dismiss. Consequently, DBP filed its answer, claiming that it complied with the legal requirements for a valid foreclosure. DBP further claimed that it cancelled the conditional restructuring of ERHC's loan because ERHC failed to comply with some material conditions of the restructuring agreement.

Meanwhile, acting on ERHC's application for the issuance of a writ of preliminary injunction, the trial court granted the writ on 20 August 1990. Accordingly, the trial court enjoined DBP from enforcing the legal effects of the foreclosure of both the chattel and real estate mortgages.

Thereafter, trial on the merits ensued. After the parties presented their evidence, the trial court rendered a Decision<sup>[8]</sup> dated 28 January 1992, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff corporation and against the defendants:

1. Declaring as null and void the foreclosure and auction sale of the personal properties of plaintiff corporation held on July 10, 1986;
2. Declaring as null and void the foreclosure and auction sale of the real properties of plaintiff corporation covered by TCT No. RT-1075 (19980); TCT No. RT-1076 (19981); TCT No. RT-1077 (22367) and TCT No. 10244 of the Register of Deeds of Camarines Sur (now Iriga City) in the auction sale thereof held on September 11, 1986, and all the improvements therein;

3. Ordering the Register of Deeds of Camarines Sur (now Iriga City) to cancel the annotations of the Sheriff's Certificate of Sale on the aforesaid titles as null and void and without any legal effect;

4. Ordering the defendant Development Bank of the Philippines to comply with the restructuring of plaintiff corporation's loans retroactively as though the foreclosure had not taken place in the interest of justice and equity; and

5. Ordering the defendant DBP to pay plaintiff corporation moral damages in the amount of P500,000.00 for initiating what was a clearly illegal foreclosure and causing the said plaintiff corporation to suffer needlessly anguish, opprobrium and disrepute as a consequence thereto.

SO ORDERED.

Both ERHC and DBP appealed the trial court's decision to the Court of Appeals. ERHC anchored its appeal on the insufficiency of the moral damages awarded by the trial court and the absence of any award of temperate, nominal or exemplary damages. DBP's appeal, on the other hand, assailed the decision as well as the order dismissing its petition for a writ of possession.

The Court of Appeals, which consolidated the appeals, affirmed the decision of the trial court.<sup>[9]</sup> DBP filed a Motion for Reconsideration which the Court of Appeals denied.<sup>[10]</sup>

Hence, this petition.

### **The Ruling of the Court of Appeals**

The Court of Appeals sustained the trial court's ruling that the foreclosure was void. The Court of Appeals affirmed the trial court's finding that DBP failed to comply with the posting and publication requirements under the applicable laws. The Court of Appeals held that the non-execution of the certificate of posting of the notices of auction sale and the non-republication of the notice of the rescheduled 11 September 1986 auction sale invalidated the foreclosure.

The Court of Appeals also found that the parties perfected the restructuring agreement and that ERHC substantially complied with its conditions based on the following "circumstances":

- (a) The transmittal letter dated October 20, 1981 which relates to the progress of the restructuring of the mortgage account of Emerald Resort Hotel Corporation and that the same has been approved by the SEC (Exh. "D")

(b) The transfer of shares of stocks to appellant DBP, the value of which are broken as follows:

1. Stock certificate No. 30 for 1,862,148 shares worth P1,862,148.00 (Exhs. "D" and "D-1");
2. Stock certificate No. 32 for 932,852 shares worth P953,852.00 (Exhs. "F" and "F-1");
3. Stock certificate No. 031, for 691,052 shares worth P691,052.00 (Exhs. "M" and "M-5").

(c) The acceptance of the foregoing by the DBP without raising the fact of delay as embodied in condition no. 7 of Exh. "B".

(d) No rejection was made by the defendant-appellant DBP at the time the shares of stocks were being held by the latter.

(e) The belated rejection of the shares of stocks was interposed only at the time the instant suit was filed which was long after the expiration of the 90-day period extended by DBP to Emerald.

(f) No rejection was also made when plaintiff corporation did not avail of the additional loan which was allegedly part of the package accommodation.<sup>[11]</sup>

The Court of Appeals also affirmed the trial court's award of moral damages but denied ERHC's claim for temperate and exemplary damages. The Court of Appeals found that DBP's intrusion, assisted by sheriffs and several armed men, into Hotel Ibalon and the sheriffs' inventory of the hotel's furniture and fixtures caused fear and anxiety to the hotel owner, staff and guests. These acts, according to the Court of Appeals, debased the hotel's goodwill and undermined its viability warranting the award of moral damages.

Finding the foreclosure void, the Court of Appeals also denied DBP's petition for a deficiency claim and a writ of possession.

### **The Issues**

DBP presents the following issues for resolution:

1. Whether DBP complied with the posting and publication requirements under applicable laws for a valid foreclosure.
2. Whether the restructuring agreement between DBP and ERHC was perfected and implemented by the parties before the foreclosure.
3. Whether ERHC's offer to lease the foreclosed properties constitutes a waiver of its right to question the validity of the foreclosure.
4. Whether the award of moral damages to ERHC, a juridical person, is proper.

### **The Court's Ruling**

The petition is partly meritorious.

***First Issue: Compliance with the posting and publication requirements under applicable laws***

***Posting requirement under Acts Nos. 3135 and 1508***

In alleging that the foreclosure was valid, DBP maintains that it complied with the mandatory posting requirement under applicable laws.<sup>[12]</sup> DBP insists that the non-execution of the certificate of posting of the auction sale notices did not invalidate the foreclosure.

We agree.

This Court ruled in ***Cristobal v. Court of Appeals***<sup>[13]</sup> that a certificate of posting is not required, much less considered indispensable for the validity of an extrajudicial foreclosure sale of real property under Act No. 3135. ***Cristobal*** merely reiterated the doctrine laid down in ***Bohanan v. Court of Appeals***.<sup>[14]</sup> In the present case, the foreclosing sheriffs failed to execute the certificate of posting of the auction sale notices. However, this fact alone does not prove that the sheriffs failed to post the required notices. As held in ***Bohanan***, "the fact alone that there is no certificate of posting attached to the sheriff's records is not sufficient to prove the lack of posting."<sup>[15]</sup>

Based on the records, DBP presented sufficient evidence to prove that the sheriffs posted the notices of the extrajudicial sale. The trial and appellate courts glaringly erred and gravely abused its discretion in disregarding the sheriffs' partial report and the sheriffs' certificate of sale executed after the auction sale. A careful examination of these two documents clearly shows that the foreclosing sheriffs posted the required notices of sale.

The partial report dated 10 July 1986 signed by both Sheriff Abel Ramos and Deputy Sheriff Ruperto Galeon states in part:

That on July 1, 1986, ***the undersigned sheriffs posted the notice of public auction sale of chattel mortgage*** in the conspicuous places, and at the Iriga City Hall Bulletin Board, including Ibalon Hotel, Iriga City xxx.<sup>[16]</sup> (Emphasis supplied)

Similarly, the certificate of sale of the real properties signed by both Sheriff Ramos and Deputy Sheriff Galeon on 11 September 1986 states in part:

I, FURTHERMORE CERTIFY that the Notice of Sale was published in BICOL TRIBUNE, a newspaper of general circulation in the province of Camarines Sur, for three (3) consecutive weeks and ***three (3) copies of the notices of sale were posted in three (3) public places*** of the City where the properties are located for no less than twenty (20) days before the sale. <sup>[17]</sup> (Emphasis supplied)