

## **FIRST DIVISION**

**[ G. R. No. 106880, August 20, 2002 ]**

**PEDRO ACLON, PETITIONER, VS. COURT OF APPEALS,  
PHILIPPINE NATIONAL BANK AND SPS. ZOSIMO AND NATALIA  
OIMO, RESPONDENTS.**

**[G. R. NO. 120190, AUGUST 20, 2002]**

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PHILIPPINE NATIONAL BANK AND SPS. ZOSIMO AND NATALIA  
OIMO, RESPONDENTS.**

### **D E C I S I O N**

**AUSTRIA-MARTINEZ, J.:**

Before us are two petitions for review on certiorari under Rule 45 of the Rules of Court, both filed by petitioner Pedro Aclon (Aclon for brevity). The first seeks to reverse and set aside the Decision of the Court of Appeals dated April 30, 1992 in C.A. G.R. CV No. 24106.<sup>[1]</sup> The second assails the Decision dated August 31, 1994 in C.A. G.R. CV No. 24133.<sup>[2]</sup>

The facts of the case are as follows:

On December 15, 1964, Aclon secured a loan from the Philippine National Bank (PNB for brevity)) at Catbalogan, Samar, in the amount of Five Thousand Pesos (P5,000.00), payable within one (1) year.<sup>[3]</sup>

As security for the loan, Aclon mortgaged to PNB two parcels of land, to wit: a 234 square-meter residential lot, with all the improvements existing thereon, covered by Tax Declaration No. 24321, situated at the poblacion of Sulat, Eastern Samar; and, a 165,735 square-meter agricultural land with all the improvements existing thereon, covered by Original Certificate of Title (OCT) No. 860, located at Sitio Balagon, Barrio Can-ilay, Can-avid, Eastern Samar.<sup>[4]</sup>

The loan became due and payable on December 15, 1965. However, the same was extended after Aclon made a partial payment. Despite the extension and repeated demands from PNB, Aclon failed to pay the loan in full at the time of its maturity. Consequently, on May 31, 1973, PNB instituted extra-judicial foreclosure proceedings in accordance with the provisions of Act 3135, as amended.<sup>[5]</sup>

After notice<sup>[6]</sup> and publication<sup>[7]</sup>, the Deputy Provincial Sheriff of Oras, Eastern Samar conducted a sale at public auction of the mortgaged properties on July 17, 1973 at the municipal building of Oras. The subject properties were awarded to PNB, being the sole and highest bidder. Subsequently, on August 28, 1973, a Sheriff's

Certificate of Sale<sup>[8]</sup> was issued in PNB's favor and the same was registered with the Register of Deeds of Samar on October 4, 1973.

The period of redemption lapsed on October 4, 1974 without Aclon redeeming the foreclosed properties. PNB then consolidated its ownership over the said parcels of land on October 16, 1974.<sup>[9]</sup>

On June 25, 1975, PNB sold to spouses Zosimo and Natalia Opimo the subject residential land located at Sulat, Eastern Samar.<sup>[10]</sup> However, Aclon remained in possession of the property. When the Opimo spouses attempted to take possession of the subject lot, Aclon refused to vacate the same and instead filed a complaint against PNB and the Opimo spouses for Annulment of Two Contracts of Sale with Damages and Consignation docketed as Civil Case No. 1907 in the Regional Trial Court (Branch I) of Borongan, Eastern Samar.

The Opimo spouses, on the other hand, filed a complaint for Recovery of Real Property with Preliminary Mandatory Injunction and Damages docketed as Civil Case No. 1859 in the same trial court.

Both cases were heard jointly. However, despite consolidation of the two cases, the trial court rendered separate decisions for each case, as follows:

The dispositive portion of the RTC decision in Civil Case No. 1859 reads -

"WHEREFORE, judgment is hereby rendered declaring the foreclosure proceedings of defendants' properties by the Philippine National Bank and the subsequent contracts of sale involving said mortgaged properties valid and declaring plaintiff Zosimo Opimo and his wife the lawful owners of the properties in question and entitled to the possession thereof with costs against the defendant Pedro Aclon. The Philippine National Bank is absolved from the complaints."<sup>[11]</sup>

The dispositive portion of the RTC decision in Civil Case No. 1907 reads -

"WHEREFORE, judgment is hereby rendered dismissing this action for annulment of sale and it ordered(sic) that the plaintiff Pedro Aclon and all persons acting under his command vacate the house and lot in Sulat in question now covered by Tax Declaration No. 31144 of Zosimo A. Opimo and give possession to defendant Zosimo A. Opimo and his wife, to pay to the Opimos the amount of Thirteen Thousand Pesos (P13,00) representing the reasonable compensation for use of said house and lot from June 25, 1975 to December 21, 1988, plus One Hundred Pesos (P100) a month thereafter until possession is completely delivered to the Opimos, to pay attorney's fees in the amount of One Thousand Five Hundred Pesos (P1,500), and to pay the costs of the suit. The Philippine National Bank is absolved from the complaint."<sup>[12]</sup>

Aclon brought two separate appeals with the Court of Appeals. The appeal in Civil Case No. 1907 is docketed as CA-G.R. CV No. 24106 while the appeal in Civil Case No. 1859 is docketed as CA-G.R. CV No. 24133.

On April 30, 1992, the Court of Appeals promulgated its Decision in CA-G.R. CV No. 24106 (Civil Case No. 1907), affirming with modification the trial court's decision by deleting the award of attorney's fees, to wit:

"No reason having been stated in the body of the decision for the award of attorney's fees, such award is hereby disallowed in this appeal (Abrogar vs. Intermediate Appellate Court, 157 SCRA 57).

"WHEREFORE, with the foregoing modification, the Decision appealed from is hereby AFFIRMED with costs against appellant.

"SO ORDERED."<sup>[13]</sup>

On August 31, 1994, the Court of Appeals promulgated its Decision in CA-G.R. CV No. 24133 (Civil Case No. 1859), the dispositive portion of which reads:

"WHEREFORE, the decision appealed from is modified as follows:

"(1) the extrajudicial foreclosure proceedings in question, as well as the sale at public auction to defendant PNB are declared null and void for not having complied with the mandatory provisions of Act 3135 as well as the stipulation between the parties;

"(2) the subsequent sale of the property by defendant PNB to appellees is however declared valid;

"(3) defendant-appellant and all persons claiming rights under him are ordered to vacate the property in question and to surrender possession thereof to plaintiffs-appellees."

"SO ORDERED."<sup>[14]</sup>

Petitioner Aclon seasonably appealed each case to this Court. Inasmuch as the factual antecedents, parties involved and issues raised in these cases are substantially the same, we consolidated the two petitions.<sup>[15]</sup>

In G.R. No. 106880 (CA-G.R. CV No. 24106), petitioner raises the following Assignment of Errors:

"1. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN NOT HOLDING THAT THE EXTRAJUDICIAL FORECLOSURE OF THE MORTGAGE AS WELL AS THE FORECLOSURE SALE ARE NULL AND VOID AND OF NO FORCE AND EFFECT FOR LACK OF COMPLIANCE WITH THE MANDATORY REQUIREMENTS OF THE LAW, ACT 3135, ON POSTING, PUBLICATION OF THE NOTICE OF SALE AND THE PLACE OF AUCTION SALE.

"2. THE RESPONDENT COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT THE FORECLOSURE SALE BEING A NULLITY, THE SALES BY THE RESPONDENT PNB OF THE PROPERTY IN QUESTION TO ITSELF AND TO THE RESPONDENT OPIMO SPOUSES ARE LIKEWISE A NULLITY AND OF NO FORCE AND EFFECT.

"3. THE RESPONDENT COURT OF APPEALS SERIOUSLY ERRED IN NOT HOLDING THAT THE ACCEPTANCE BY RESPONDENT PNB OF PAYMENTS WAS REALLY INTENDED FOR PETITIONERS' OBLIGATIONS AND NOT TO OTHER EXPENSES INCURRED IN THE FORECLOSURE PROCEEDINGS BECAUSE OF THE NULLITY OF THE SAID FORECLOSURE.