

## THIRD DIVISION

[ G.R. No. 120859, June 26, 2001 ]

### **METROPOLITAN BANK AND TRUST COMPANY, PETITIONER, VS. FRANCISCO Y. WONG, RESPONDENT.**

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

##### **SANDOVAL-GUTIERREZ, J.:**

It is bad enough that the mortgagor has no choice but to yield his property in a foreclosure proceeding. It is infinitely worse, if prior thereto, he was denied of his basic right to be informed of the impending loss of his property. This is another instance when law and morals echo the same sentiment.

This is a petition for review on certiorari seeking the reversal and setting aside of the decision dated June 13, 1994 and resolution dated June 14, 1995 of the Court of Appeals in CA-G.R. CV No. 35615 entitled "Francisco Y. Wong versus Metropolitan Bank and Trust Company."<sup>[1]</sup>

The essential antecedents are:

Sometime in 1976, the Mindanao Grains, Inc. (MGI for brevity), through its officers Wenceslao Buenaventura and Faustino Go, applied for a credit accommodation with the Metropolitan Bank and Trust Company (herein petitioner) to finance its rice and corn warehousing business. As a security for such credit accommodation, respondent Francisco Y. Wong, and his wife Betty C. Wong executed in favor of petitioner a real estate mortgage over a parcel of land consisting of 31, 292 square meters located at Campo 7, Molave, Zamboanga del Sur and registered in respondent's name under Transfer Certificate of Title (TCT) No. 11758.

On April 11, 1980, due to MGI's failure to pay the obligation secured by the real estate mortgage, petitioner filed an application for extra-judicial foreclosure under Act No. 3135. A notice of foreclosure sale was published in *Pagadian Times* once, for three consecutive weeks (May 18-25, 1980, May 26-June 2, 1980 and June 2-8, 1980), setting the auction sale of the mortgaged property on June 5, 1980. No notice was posted in the municipality or city where the mortgaged property was situated.

As a consequence, MGI, through its president, Simeon Chang (Chang), requested petitioner to postpone the scheduled auction sale from June 5, 1980 to July 7, 1980. Petitioner granted the request. Thereafter, Chang and petitioner agreed that should MGI pay P20,000.00 on or before the scheduled auction sale, the same would be postponed for a period of 60 days. Chang paid the amount on November 3, 1981. Despite such payment, Sheriff Deo Bontia proceeded with the auction sale on November 23, 1981. Petitioner was adjudged the sole and highest bidder. Thus, a certificate of sale was issued to petitioner. The sale was registered with the Registry

of Deeds on the same day. After the expiration of the one (1) year redemption period, ownership over the property was consolidated and TCT No. T-17853 was correspondingly issued in the name of petitioner.

Respondent, unaware of the foregoing developments, applied for a credit accommodation with the Producers Bank of the Philippines, Iloilo City, using as security his TCT No. 11758. It was only then when he learned that his property was already foreclosed by petitioner and no longer in his name.

Feeling aggrieved, respondent filed with the Regional Trial Court, Branch 18, Pagadian City a complaint for reconveyance and damages against petitioner and the Register of Deeds of Zamboanga del Sur. Respondent, in his complaint, assailed the validity of the extra-judicial foreclosure sale basically on the ground that petitioner did not comply with the requirements of Section 3, Act No. 3135 that *"notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality and city."*

During the pendency of the case, petitioner sold the disputed property to a certain Betty Ong Yu.

After hearing, the trial court decreed:

**"WHEREFORE, IN VIEW OF ALL THE FOREGOING**, judgment is hereby rendered sentencing defendant Metropolitan Bank and Trust Company to pay plaintiff the following amounts:

1. Ten Million, Five Hundred Thousand (P10,500,000.00) Pesos representing the fair market value of the property as of the promulgation of this decision, with interest of twenty four (24%) percent per annum thereof until fully paid;
2. Moral damages of Two million (P2,000,000.00) Pesos;
3. Exemplary damages of Ten million (P10,000,000.00) Pesos;
4. Attorney's fee of Two Hundred Thousand (P200,000.00) Pesos, plus Five Hundred (P500.00) Pesos for every hearing or court proceeding actually attended by plaintiff's counsel; and
5. Costs of suit.

No monetary judgment can be rendered against defendant Register of Deeds of Zamboanga del Sur in view of the absence of monetary claim in the complaint.

Defendant bank's counterclaim is hereby **DISMISSED** for lack of merit.

SO ORDERED."<sup>[2]</sup>

On appeal by petitioner, the Court of Appeals affirmed the RTC decision with

modification in the sense that the monetary awards were reduced, thus:

"**WHEREFORE**, the judgment appealed from is hereby **MODIFIED**, directing the appellant to pay appellees the following amounts:

1. Four Million (P4,000,000.00) Pesos representing the fair market value of the subject property;
2. Moral damages of Five Hundred Thousand (P500,000.00) Pesos;
3. Exemplary damages of One Million (P1,000,000.00) Pesos;
4. Attorney's fees of Two Hundred Thousand (P200,000.00) Pesos, plus Five Hundred (P500.00) Pesos for every hearing or court proceeding actually attended by plaintiff's counsel; and
5. Costs of suit.

**SO ORDERED."**

Twice thwarted, petitioner now comes before us imputing the following errors to the Court of Appeals:

#### I

THE RESPONDENT COURT OF APPEALS ERRED IN RULING THAT THE FORECLOSURE SALE CONDUCTED ON NOVEMBER 23, 1981 WAS LEGALLY INFIRM FOR NON – COMPLIANCE WITH THE STATUTORY REQUIREMENTS OF POSTING AND PUBLICATION AS PROVIDED FOR IN ACT 3135, AS AMENDED.

#### II

THE RESPONDENT COURT OF APPEALS ERRED IN AWARDING DAMAGES AND ATTORNEY'S FEES TO RESPONDENT WONG.

Petitioner places excessive reliance on the case of ***Olizon v. Court of Appeals***<sup>[3]</sup> in justifying its claims: **(a)** that its failure to comply with the **posting** requirement under Section 3 of Act No, 3135 did not necessarily result in the nullification of the foreclosure sale since it complied with the publication requirement; and **(b)** that personal notice of the foreclosure proceedings to respondent is not a condition sine qua non for its validity. In assailing the monetary awards to respondent, petitioner claims it was not guilty of bad faith in selling the disputed property to Betty Ong Yu, the sale having been perfected even before respondent filed his action for reconveyance and damages with the trial court.

For its part, respondent argues that "the unusual nature of the attendant facts and the peculiarity of the confluent circumstances" involved in ***Olizon*** are not present in

the instant case.

The petition is bereft of merit.

Succinct and unmistakable is the consistent pronouncement of this Court that it is not a trier of facts. And well-entrenched is the doctrine that pure questions of fact may not be the subject of appeal by certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as this mode of appeal is generally confined to questions of law. Corollarily, non-compliance with the requirements of notice and publication in an extra-judicial foreclosure is a factual issue. The resolution thereof by the lower courts is binding and conclusive upon this Court.<sup>[4]</sup> Thus, disregarding all factual issues which petitioner interjected in his petition, the only crucial *legal queries* in this case are: **first**, is personal notice to respondent a condition *sine qua non* to the validity of the foreclosure proceedings? and, **second**, is petitioner's non-compliance with the posting requirement under Section 3, Act No. 3135 fatal to the validity of the foreclosure proceedings?

In resolving the first query, we resort to the fundamental principle that a contract is the law between the parties and, that absent any showing that its provisions are wholly or in part contrary to law, morals, good customs, public order, or public policy, it shall be enforced to the letter by the courts. Section 3, Act No. 3135 reads:

"Se. 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality and city."

The Act only requires **(1)** the posting of notices of sale in three public places, and **(2)** the publication of the same in a newspaper of general circulation. Personal notice to the mortgagor is not necessary. *Nevertheless*, the parties to the mortgage contract are not precluded from exacting additional requirements.<sup>[5]</sup> In this case, petitioner and respondent in entering into a contract of real estate mortgage, agreed inter alia:

"all correspondence relative to this mortgage, including demand letters, summonses, subpoenas, or notifications of any judicial or extra-judicial action shall be sent to the MORTGAGOR at 40-42 Aldeguer St. Iloilo City, or at the address that may hereafter be given in writing by the MORTGAGOR to the MORTGAGEE."

Precisely, the purpose of the foregoing stipulation is to apprise respondent of any action which petitioner might take on the subject property, thus according him the opportunity to safeguard his rights. When petitioner failed to send the notice of foreclosure sale to respondent, he committed a contractual breach sufficient to render the foreclosure sale on November 23, 1981 null and void.

The second query must be answered in the affirmative. An incisive scrutiny of