

## SECOND DIVISION

[ G.R. No. 80390, March 27, 1998 ]

**CITY SHERIFF, ILIGAN CITY AND SPOUSES ANGEL L. BAUTISTA  
AND ANGELICA M. BAUTISTA, PETITIONERS, VS. ALFARO  
FORTUNADO, EDITHA FORTUNADO, & NESTOR FORTUNADO,  
RESPONDENTS.**

### D E C I S I O N

**MARTINEZ, J.:**

This petition for review on *certiorari* seeks to nullify the Order<sup>[1]</sup> dated January 24, 1986 of the Regional Trial Court of Lanao del Norte, Branch V, in Civil Case No. 262, which reversed its earlier Decision<sup>[2]</sup> dated July 31, 1985 dismissing the complaint filed by respondents.

The facts are not disputed:

Respondents Alfaro, Editha and Nestor, all surnamed Fortunado, are the registered owners of two parcels of land covered by Transfer Certificates of Title No. T-3041 and T-1929, both registered with the Register of Deeds of Iligan City. Said properties were mortgaged by Arsenio Lopez, Jr. on July 24, 1968 to the Traders Commercial Bank (now Traders Royal Bank) to secure a loan obligation in the amount of ₱ 370,000.00.

On January 6, 1971, respondents instituted an action before the then Court of First Instance of Rizal, Branch XVIII, against Arsenio Lopez, Jr. and Traders Royal Bank, among others, for annulment of mortgage. In said complaint, Traders Royal Bank interposed a counterclaim for foreclosure of the mortgage.

On August 24, 1973, the trial court rendered a decision<sup>[3]</sup>, the dispositive portion of which reads:

"WHEREFORE, the Court renders judgment:

I. As Regards the Plaintiff's Complaint:

1. Ordering the defendant Mariano Pascual to pay to the plaintiffs the amount of ₱24,550.00 plus legal interest from the filing of the complaint until fully paid and attorney's fees in the amount of ₱2,000.00 and to pay the costs.
2. Ordering the deed of real estate mortgage which is attached as Annex 'B' of the complaint to be declared null and void and, ordering the Register of Deeds of Iligan City to cancel the said mortgage at the back of TCT No. T-1929, Book I, Page 8 and TCT No. T-3040, Book I, Page 96 of said Register of Deeds.

II. With Respect to the Cross-Claim and the Third-Party Complaint of Defendant Traders Commercial Bank:

1. Ordering the spouses Arsenio Lopez, Jr. and Ofelia Lopez to pay the Traders Commercial Bank jointly and severally the amount of P578,025.23, inclusive of interest and other bank charges as of April 30, 1971, and, thereafter, plus all interest and bank charges until full payment is made and, to pay to the bank the amount of P20,000.00 as attorney's fees and the costs.

The bank's counterclaim against the plaintiffs is hereby dismissed.

Likewise, the counterclaim of Mariano Pascual against the plaintiffs is also dismissed.

SO ORDERED."

On appeal, the Court of Appeals modified the trial court's decision, in this manner:

"WHEREFORE, the decision appealed from is hereby modified by eliminating paragraph 2 of the dispositive portion of the decision of the lower court declaring the real estate mortgage in favor of the Traders Commercial Bank null and void. The decision is affirmed in all other respects."<sup>[4]</sup>

On December 28, 1983, Traders Royal Bank assigned<sup>[5]</sup> its rights to the mortgage to petitioner Angel L. Bautista. By virtue of the said assignment, petitioner on March 19, 1984 wrote the City Sheriff of Iligan City requesting that the mortgaged properties be foreclosed for non-payment of the loan obligation. To thwart the pending foreclosure, respondents filed with the Regional Trial Court of Lanao del Norte, Branch V, a complaint for cancellation of lien with preliminary injunction against petitioner, which was docketed as Civil Case No. 262.

After petitioner filed his answer, respondents moved for a summary judgment which was granted by the court. Consequently, on July 31, 1985, the trial court rendered judgment dismissing the complaint. In its decision, the trial court delved on the issue of prescription of a mortgage action.

Respondents moved for reconsideration arguing that since the principal loan has already been paid, the mortgage, which is an accessory contract, should likewise be extinguished.

On January 24, 1986, the trial court modified its earlier decision disposing thus:

"WHEREFORE, the motion for reconsideration, as amended, of the summary judgment of July 31, 1985 is hereby reconsidered and modified to read:

'Premises considered, the Court finds that the plaintiffs have made out a preponderating case against the defendants.'

And as prayed for in the complaint, the temporary restraining order of the Court in the case on April 23, 1984 is hereby converted into a preliminary injunction and by these presents made permanent. The City Sheriff of Iligan City, Mr. Angel L. Bautista and Mrs. Angelica M. Bautista are hereby permanently restrained from conducting a public auction sale of the property covered by Transfer Certificate of Title No. T-3041 (a.f.). The Register of Deeds of Iligan City is hereby further ordered