

## FIRST DIVISION

[ G.R. No. 122079, June 27, 1997 ]

**SPOUSES ANTONIO E.A. CONCEPCION AND MANUELA S. CONCEPCION, PETITIONERS, VS. HON. COURT OF APPEALS, HOME SAVINGS BANK AND TRUST COMPANY, AND AS NOMINAL PARTY-DEFENDANTS, THE SHERIFF ASSIGNED TO SAN JUAN, METRO MANILA, AND WHO CONDUCTED THE AUCTION SALE AND THE REGISTER OF DEEDS OR HIS REPRESENTATIVE OF SAN JUAN, METRO MANILA, AND ASAJE REALTY CORPORATION, RESPONDENTS.**

### D E C I S I O N

**VITUG, J.:**

The spouses Antonio E.A. Concepcion and Manuela S. Concepcion assail, via the instant petition for review on certiorari, the decision,<sup>[1]</sup> dated 15 September 1995, of the Court of Appeals, affirming with modification the judgment of the Regional Trial Court ("RTC"),<sup>[2]</sup> Branch 157, of Pasig City,<sup>[3]</sup> that dismissed the complaint of herein petitioners against private respondents.

The facts, hereunder narrated, are culled from the findings of the appellate court.

On 17 January 1979, the Home Savings Bank and Trust Company (now Insular Life Savings and Trust Company) granted to the Concepcions a loan amounting to P1,400,000.00. The Concepcions, in turn, executed in favor of the bank a promissory note and a real estate mortgage over their property located at 11 Albany St., Greenhills, San Juan, Metro Manila. The loan was payable in equal quarterly amortizations for a period of fifteen (15) years and carried an interest rate of sixteen percent (16%) per annum. The promissory note provided that the Concepcions had authorized -

"x x x the Bank to correspondingly increase the interest rate presently stipulated in this transaction without advance notice to me/us in the event the Central Bank of the Philippines raises its rediscount rate to member banks, and/or the interest rate on savings and time deposit, and/or the interest rate on such loans and/or advances."<sup>[4]</sup>

In accordance with the above provision, the bank unilaterally increased the interest rate from 16% to 21% effective 17 February 1980; from 21% to 30% effective 17 October 1984; and from 30% to 38% effective 17 November 1984, increasing the quarterly amortizations from P67,830.00 to, respectively, P77,619.72, P104,661.10, and P123,797.05 for the periods aforesated. The Concepcions paid, under protest, the increased amortizations of P77,619.72 and P104,661.10 until January 1985 but thereafter failed to pay the quarterly amortization of P123,797.05 (starting due date of 17 April 1985).

In a letter, dated 15 July 1985, the bank's President made a demand on the Concepcions for the payment of the arrearages. The Concepcions failed to pay, constraining the bank's counsel to send a final demand letter, dated 26 August 1985, for the payment of P393,878.81, covering the spouses' due account for three quarterly payments plus interest, penalty, and service charges. Still, no payment was received.

On 14 April 1986, the bank finally filed with the Office of the Provincial Sheriff of Pasig City a petition for extrajudicial foreclosure of the real estate mortgage executed by the Concepcions. A notice of sale was issued on 15 May 1986, setting the public auction sale on 11 June 1986. The notice was published in the newspaper "Mabuhay." A copy of the notice was sent to the Concepcions at 59 Whitefield St., White Plains Subdivision, Quezon City and/or at 11 Albany St., Greenhills Subdivision, San Juan, Metro Manila. The public auction sale went on as scheduled with the bank emerging as the highest bidder. A Certificate of Sale was issued in favor of the bank.

The Concepcions were unable to exercise their right of redemption within the one-year period provided under Act No. 3135. The bank thus consolidated its title over the property and, after the cancellation of the title in the name of the Concepcions, a new transfer certificate of title (No. 090-R) was issued in the name of Home Savings Bank and Trust Company.

On 31 July 1987, the bank executed a Deed of Absolute Sale in favor of Asaje Realty Corporation and a new certificate of title was issued in the latter's name.

Meanwhile, on 29 July 1987, the Concepcions filed an action against Home Savings Bank and Trust Company, the Sheriff of San Juan, Metro Manila, and the Register of Deeds of San Juan, Metro Manila, for the cancellation of the foreclosure sale, the declaration of nullity of the consolidation of title in favor of the bank, and the declaration of nullity of the unilateral increases of the interest rates on their loan. The spouses likewise claimed damages against the defendants. The Concepcions, having learned of the sale of the property to Asaje Realty Corporation, filed an amended complaint impleading the realty corporation and so praying as well for the cancellation of the sale executed between said corporation and the bank and the cancellation of the certificate of title issued in the name of Asaje.

On 31 August 1992, the trial court found for the defendants and ruled:

"In view of all the foregoing premises, this Court finally concludes that the plaintiffs have no cause of action either against defendant Home Savings Bank & Trust Company or defendant Asaje Realty Corporation; and under the circumstances of this case, it deems it just and equitable that attorney's fees and expenses of litigation should be recovered by said defendants.

"WHEREFORE, judgment is hereby rendered dismissing the amended complaint of plaintiffs Spouses Antonio E.A. Concepcion and Manuela S. Concepcion against the defendants for lack of merit, and ordering the said plaintiffs to pay attorney's fees and expenses of litigation in the sum

of P30,000.00 to defendant Home Savings Bank & Trust Company and in the amount of P25,000.00 to defendant Asaje Realty Corporation, in addition to their respective costs of suit.

"SO ORDERED."<sup>[5]</sup>

The Concepcions went to the Court of Appeals.

On 15 September 1995, the appellate court affirmed the trial court's decision, with modification, as follows:

"Under the facts and circumstances of the case at bench, the award of attorney's fees, expenses of litigation and costs of suit in favor of defendant-appellee should be deleted. It is not a sound policy to place a penalty on the right to litigate, nor should counsel's fees be awarded everytime a party wins a suit (Arenas vs. Court of Appeals, 169 SCRA 558).

"WHEREFORE, the appealed judgment is AFFIRMED with the modification that the award of attorneys fees, litigation expenses and costs of suit in favor of defendant-appellees are deleted from the dispositive portion.

"SO ORDERED."<sup>[6]</sup>

The Concepcions forthwith filed with this Court a petition for review on certiorari, contending that they have been denied their contractually stipulated right to be personally notified of the foreclosure proceedings on the mortgaged property.

There is some merit in the petition.

The three common types of forced sales arising from a failure to pay a mortgage debt include (a) an extrajudicial foreclosure sale, governed by Act No. 3135; (b) a judicial foreclosure sale, regulated by Rule 68 of the Rules of Court; and (c) an ordinary execution sale, covered by Rule 39 of the Rules of Court.<sup>[7]</sup> Each mode, peculiarly, has its own requirements.

In an extrajudicial foreclosure, such as here, Section 3 of Act No. 3135<sup>[8]</sup> is the law applicable;<sup>[9]</sup> the provision reads:

"Sec. 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 or 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.<sup>[10]</sup> Personal notice to the mortgagor is not necessary.<sup>[11]</sup> Nevertheless, the parties to the mortgage contract are not precluded from exacting additional requirements.

In the case at bar, the mortgage contract stipulated that -

"All correspondence relative to this Mortgage, including demand letters, summons, subpoenas, or notifications of any judicial or extrajudicial actions shall be sent to the Mortgagor at the address given above or at the address that may hereafter be given in writing by the Mortgagor to the Mortgagee, and the mere act of sending any correspondence by mail or by personal delivery to the said address shall be valid and effective notice to the Mortgagor for all legal purposes, and fact that any communication is not actually received by the Mortgagor, or that it has been returned unclaimed to the Mortgagee, or that no person was found at the address given, or that the address is fictitious or cannot be located, shall not excuse or relieve Mortgagor from the effects of such notice."<sup>[12]</sup>

The stipulation, not being contrary to law, morals, good customs, public order or public policy, is the law between the contracting parties and should be faithfully complied with.<sup>[13]</sup>

Private respondent bank maintains that the stipulation that "all correspondence relative to (the) Mortgage x x x shall be sent to the Mortgagor at the address given above or at the address that may hereafter be given in writing by the Mortgagor to the Mortgagee"<sup>[14]</sup> gives the mortgagee an alternative to send its correspondence either at the old or the new address given.<sup>[15]</sup> This stand is illogical. It could not have been the intendment of the parties to defeat the very purpose of the provision referred to which is obviously to apprise the mortgagors of the bank's action that might affect the property and to accord to them an opportunity to safeguard their rights. The Court finds the bank's failure to comply with its agreement with petitioners an inexcusable breach of the mortgagee's covenant. Neither petitioners' subsequent opportunity to redeem the property nor their failed negotiations with the bank for a new schedule of payments,<sup>[16]</sup> can be a valid justification for the breach.

The foregoing notwithstanding, petitioners may no longer seek the reconveyance of the property from private respondent Asaje Realty Corporation, the latter having been, evidently, an innocent purchaser in good faith.<sup>[17]</sup> The realty corporation purchased the property when the title was already in the name of the bank. It was under no obligation to investigate the title of the bank or to look beyond what clearly appeared to be on the face of the certificate.<sup>[18]</sup>

Private respondent bank, however, can still be held to account for the bid price of Asaje Realty Corporation over and above, if any, the amount due the bank on the basis of the original interest rate, the unilateral increases made by the bank having been correctly invalidated by the Court of Appeals.

The validity of "escalation" or "escalator" clauses in contracts, in general, was upheld by the Supreme Court in *Banco Filipino Savings and Mortgage Bank vs. Hon. Navarro and Del Valle*.<sup>[19]</sup> Hence:

"Some contracts contain what is known as an 'escalator clause,' which is defined as one in which the contract fixes a base price but contains a provision that in the event of specified cost increases, the seller or contractor may raise the price up to a fixed percentage of the base. Attacks on such a clause have usually been based on the claim that,