

## FIRST DIVISION

[ G.R. No. 111654, April 18, 1996 ]

**GODFREY BOHANAN, PETITIONER, VS. COURT OF APPEALS, L & R CORPORATION AND SPOUSES ROSARIO & DIONISIO CABRERA, JR., RESPONDENTS.**

### D E C I S I O N

**BELLOSILLO, J.:**

Petitioner questions the Decision of the Court of Appeals<sup>[1]</sup> which reversed the Regional Trial Court of Manila<sup>[2]</sup> declaring the foreclosure sale dated 14 September 1984 null and void. He also assails the Resolution denying his motion for reconsideration.<sup>[3]</sup>

On 7 September 1983 petitioner Godfrey Bohanan obtained a loan of P200,000.00 from private respondent L & R Corporation (hereinafter referred to as L & R) payable in sixty (60) equal monthly installments. To secure payment petitioner executed a deed mortgaging his two lots with the four-unit apartment building thereon situated in Sta. Ana, Manila, and covered by Transfer Certificates of Title Nos. 92334 and 92335 of the Registry of Deeds of Manila. The deed further provided that in case petitioner failed to pay any monthly amortization the overdue amortization or amortizations would draw monthly interest at 1-3/4% without prejudice to the right of L & R to declare the whole indebtedness or the entire unpaid balance, as the case may be, due and demandable. In addition, petitioner would have to pay collection charges including attorney's fees and other incidental expenses equivalent to 2% of the total outstanding obligation in case the matter was placed in the hands of a lawyer for collection.

Petitioner was remiss in his fourth amortization. Consequently, the remaining unpaid obligation (then supposedly amounting to P194,169.15) became due and demandable and petitioner was given a grace period of ten (10) days within which to pay but the latter failed. Thus L & R sent a notice of foreclosure and filed a petition in the Manila Sheriff's Office to commence extrajudicial foreclosure proceedings against him. Accordingly, a notice of extrajudicial foreclosure sale under Act 3135,<sup>[4]</sup> as amended, was made and copies thereof sent to L & R and petitioner Godfrey Bohanan by the Deputy Sheriff acting for the Sheriff of Manila. The notice was published in the 20 and 27 August and 3 September 1984 issues of *The Metropolitan Mail* per affidavit of its editor-publisher.

At the scheduled sale on 14 September 1984 L & R became the successful bidder with its bid of P327,615.54 and was issued a certificate of sale. However, upon failure of petitioner to redeem his property within the one-year redemption period provided by law, L & R executed an Affidavit of Consolidation of Ownership leading to the issuance on 1 October 1985 of TCT Nos. 167051 and 167052 in its name and the cancellation of petitioner's TCT Nos. 92334 and 92335. On 17 February 1987 L &

R's titles were in turn cancelled to give way to TCT Nos. 172718 and 172719 in the name of Rosario Guanzon, married to Dionisio Cabrera Jr., who bought the property from L & R for P200,000.00.

On 23 February 1987 petitioner filed a complaint against L & R Corporation and its vendees, the spouses Cabrera Jr., for recovery of property with preliminary injunction<sup>[5]</sup> contending that the sale between the Cabrerias on one hand and L & R on the other, was undertaken in fraud of a contractual commitment to him. Subsequently the complaint was amended to be one for annulment of sale with injunction and damages, with petitioner asking that the sheriff's foreclosure sale held on 14 September 1984 be declared void and that the foreclosed properties be returned to him upon his payment of the mortgage obligation.

The trial court rendered judgment in favor of petitioner declaring null and void the Sheriff's foreclosure sale *without prejudice to the foreclosure of the mortgage on said properties strictly in accordance with law*; annulling the Deed of Sale of 13 February 1987 executed by private respondent L & R in favor of Rosario Guanzon as well as the TCTs issued pursuant thereto; and, ordering payment of damages in favor of petitioner.

On 19 April 1993 the Court of Appeals reversed the trial court.<sup>[6]</sup> The appellate court concluded that there was no irregularity in the conduct of the foreclosure sale and that the spouses Cabrera could not be considered buyers in bad faith since their act of buying the properties direct from L & R, instead of through petitioner, did not automatically make them so. Hence, this recourse by Godfrey Bohanan.

Petitioner contends that respondent Court of Appeals erred in concluding that there was a valid foreclosure sale despite the fact that (a) he was not notified of the sale; (b) the deputy sheriff who conducted the sale did not submit a certificate of posting to prove the alleged posting in three (3) public places required under Act No. 3135; and, (c) the Post Office and Finance buildings where the notice of sale was allegedly posted (in addition to the City Hall) were not public places.

The petition must be denied. We agree with respondent Court of Appeals that the records show no irregularity in the foreclosure sale held on 14 September 1984. *First*, personal notice on the mortgagor is not required under Act No. 3135 as amended.<sup>[7]</sup> All that is required is that notice be given by posting notices of the sale for not less than twenty (20) days in at least three (3) public places of the municipality or city where the property is situated, and publication once a week for at least three (3) consecutive weeks in a newspaper of general circulation in the municipality or city, if the property is worth more than four hundred pesos.<sup>[8]</sup> Therefore, any discussion into the factual issue of whether petitioner received a notice of foreclosure sale would be an exercise in futility since it would not have any bearing at all on the alleged validity or invalidity of the foreclosure sale in question. *Second*, a certificate of posting is not required, much less considered indispensable, for the validity of a foreclosure sale either under Act 3135 or under the ruling in *Tambunting v. Court of Appeals*<sup>[9]</sup> cited by petitioner.

Petitioner argues that the principal defect which invalidates the questioned foreclosure sale is the non-presentation of a certificate of posting by the deputy sheriff despite the statement in *Tambunting* that *"the published notices and*