

SEVENTH DIVISION

[CA-G.R. CV No. 94698, March 18, 2014]

SPOUSES EPIFANIO PEDARSE & ELINA PEDARSE, PLAINTIFFS-APPELLEES, VS. MARILOU B. YU, DEFENDANT-APPELLANT.

DECISION

TIJAM, J.:

This is an *Appeal* seeking to set aside the Decision^[1], dated April 1, 2009, of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 22, in Civil Case No. 167-M-2006 for "*Nullification of Extra-judicial foreclosure of Real Estate Mortgage, Damages and Injunction with prayer for Temporary Restraining Order*", the dispositive portion of which states:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Annuling the extra-judicial foreclosure of real estate mortgage on the subject property;
2. Ordering the defendant Marilou B. Yu, to pay the plaintiffs the amounts of Php100,000.00 as moral damages;
3. Ordering the defendant Marilou B. Yu, to pay the plaintiff Thirty Thousand Pesos (Php30,000.00) as attorney's fees.
4. Ordering the defendants to pay the costs of suit.

The facts of the case are as follows:

Spouses Epifanio M. Pedarse and Elina Pedarse ("Plaintiffs-Appellees") obtained a Php100,000.000 loan from Marilou Yu ("Defendant-Appellant"), as evidenced by *Kasulatan ng Pagkakautang na may Sanla* ("Kasulatan") dated November 19, 2003. In the *Kasulatan*, Plaintiffs-Appellees mortgaged a property covered by TCT No. T-70824, located in Tabang, Plaridel, Bulacan to secure the loan.

On March 13, 2006, Plaintiffs-Appellees were notified of an auction sale involving the mortgaged property. Hence, on March 16, 2006, Plaintiffs-Appellees filed a Complaint for "*Nullification of Extra-judicial foreclosure of Real Estate Mortgage Damages and Injunction with prayer for Temporary Restraining Order*" with the RTC of Malolos City, Bulacan. They alleged that the obligation has already been paid. They also contended that Defendant-Appellant is not authorized to extra-judicially foreclose the property under the mortgage contract. Thus, they prayed that the scheduled auction sale on March 21, 2006 be enjoined, and that Defendant-Appellant be ordered to pay Php200,000.00 as moral damages, Php100,000.00 as exemplary damages, and attorney's fees.^[2]

The RTC set a summary hearing for the issuance of a temporary restraining order (TRO) to enjoin the March 21, 2006 scheduled auction sale.^[3] However, the issuance of TRO became moot and academic as the auction sale proceeded as scheduled and the mortgaged property was sold to Defendant-Appellant.^[4]

In her Answer, Defendant-Appellant denied the material allegations in the complaint and asserted that the foreclosure proceedings was valid. She argued that the stipulation in the *Kasulatan* stating that "*ang kasulatang ito ay ipapatupad sang-ayon sa umiiral na batas ng sanglaan,*" constitutes as a sufficient authority for the extra-judicial foreclosure of the property. Specifically, she averred compliance with the posting and publication requirements. She prayed for the dismissal of the complaint, payment of moral damages in the amount of Php50,000.00; exemplary damages in the amount of Php50,000.00 and attorney's fees in the amount of Php50,000.00.^[5]

After trial, the RTC rendered a *Decision*^[6] in favor of the Plaintiffs-Appellees. It held that the extra-judicial foreclosure of the mortgaged property was without basis in law and in fact. It also found that the mortgage contract did not contain any special power of attorney empowering the Defendant-Appellant to foreclose the property in case of default. The RTC further ruled that the foreclosure should not have proceeded because the obligation secured by the mortgaged had already been paid. Hence, it ordered the annulment of the foreclosure proceedings and awarded moral damages in the amount of Php100,000.00 and Php30,000.00 as attorney's fees in favor of Plaintiffs-Appellees.

Defendant-Appellant filed the instant *Appeal*^[7], with the following assignment of errors:

I. WHETHER OR NOT THE LOAN OBLIGATION COVERED BY THE KASULATAN NG PAGKAKAUTANG NA MAY SANLA dated NOVEMBER 19, 2003 IS SUBJECT TO A 5% INTEREST PER MONTH

II. WHETHER OR NOT THE DEBT OBLIGATION COVERED BY THE SAID KASULATAN AND WHICH WAS SECURED BY THE MORTGAGED PROPERTY HAS ALREADY BEEN PAID.

III. WHETHER OR NOT THE FORECLOSURE THE MORTGAGED PROPERTY EXTRAJUDICIALLY IS VALID AND PROPER

IV. WHETHER OR NOT THE AWARD OF MORAL DAMAGES AND ATTORNEY'S FEES ARE PROPER AND REASONABLE

Defendant-Appellant argues that the RTC erred in nullifying the extrajudicial foreclosure because Plaintiffs-Appellees have not yet settled their obligation with her. She likewise contests the trial court's declaration which disregarded the provision on the 5% monthly interest. She further alleges that the extrajudicial foreclosure was valid as the *Kasulatan* authorizes her to sell the property in case of default. Lastly, she contends that the award of moral damages and attorney's fees is erroneous.

The appeal lacks merit.

A mortgage is a contract entered into in order to secure the fulfillment of a principal obligation.^[8] In a real estate mortgage, when the principal obligation is not paid when due, the mortgagee has the right to foreclose on the mortgage and to have the property seized and sold, and to apply the proceeds to the obligation.^[9] Foreclosure is proper if the debtor is in default in the payment of his obligation.^[10]

Based on the recognition that a mortgage contract is an ancillary contract, crucial to the resolution of this case is the determination on whether the principal obligation secured by the mortgage has already been extinguished by payment.

In support of their claim of payment, Plaintiffs-Appellees presented an acknowledgment receipt dated March 13, 2004 signed by Defendant-Appellant showing that the latter received an amount of Php103,785.00 on February 26, 2004.^[11] When confronted with the said acknowledgment receipt during the trial, Defendant-Appellant admitted that she received the said amount.^[12] She, however, alleged that the Php103,785.00 served as payment for other loans by the Plaintiffs-Appellees.^[13]

We agree with Plaintiffs-Appellees that the obligation has already been paid.

As a rule, when the debtor introduces evidence that the obligation has been extinguished, the burden shifts to the creditor to produce evidence to show why payment does not extinguish the obligation.^[14] Having acknowledged payment of Php103,785.00, it was incumbent upon Defendant-Appellant to prove that such amount was payment for previous loans contracted by the Plaintiffs-Appellees.

Verily, Defendant-Appellant's testimony as to the application of the Php103,785.00 payment is imbued with inconsistencies. When she was cross-examined, she initially claimed that the Php115,762.80 reflected in the acknowledgment receipt, as the amount due from three debts of Plaintiffs-Appellees other than the one contained in the *Kasulatan*. In her testimony, she stated that:

ATTY. BERNABE:

Q: Is it not a fact, madam witness, that according to this index card their indebtedness until February 4, 2004 is Php115,600.00?

A: For the three indebtedness.

Q: Out of that, a Php103,000.00 was paid, is it not correct?

A: Yes, ma'am.

Q: Leaving a balance of Php11,977.50.

A: For the three indebtedness, yes ma'am.

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Q: And according to you, madam witness, the plaintiffs already paid the amount of Php103,785.00?

A: This refers to another document not the one in Exhibit A (*Kasulatan*)?