

EIGHTH DIVISION

[CA-G.R. CV No. 101330, November 20, 2014]

**SPS. MOHAMMAD REZA BADIEE AND MAGNA B. BADIEE,
PLAINTIFFS-APPELLANTS, VS. BPI FAMILY SAVINGS BANK, INC.,
REPRESENTED BY ITS PRESIDENT, AND THE CLERK OF COURT
AND EX-OFFICIO SHERIFF, REGIONAL TRIAL COURT,
PARAÑAQUE CITY, DEFENDANTS-APPELLEES.**

DECISION

LAMPAS PERALTA, J.:

Before the Court is an appeal from the Decision dated July 24, 2013^[1] in Civil Case No. 06-0044 of Branch 258, Regional Trial Court (RTC), Parañaque City which dismissed plaintiffs-appellants' complaint for "Annulment of Extrajudicial Foreclosure of Real Estate Mortgage Proceedings with Damages with T.R.O. and Preliminary Prohibitory Injunction."

THE ANTECEDENTS

The present appeal involves four (4) residential lots located at 5014 Castillo Street, Park View Homes, Sun Valley, Parañaque City,^[2] which were considered as paraphernal properties of plaintiff-appellant Magna B. Badiee and previously registered in her name, with the following titles and areas:

Transfer Certificates of Title (TCT) No.	Area (in sq. m.)
130518	63.00 ^[3]
130519	63.00 ^[4]
130520	62.94 ^[5]
130521	63.00 ^[6]

The foregoing residential lots were utilized by plaintiffs-appellants as security^[7] for their loan with the then Bank of South East Asia in the amount of P3,280,000.00.^[8] The Bank of South East Asia was later renamed as DBS Bank Philippines, Inc. and merged with defendant-appellee BPI Family Savings Bank.^[9]

When plaintiffs-appellants defaulted in the payment of the loan amortizations, defendant-appellee BPI Family Savings Bank filed with the Office of the Clerk of Court and Ex-Officio Sheriff of Parañaque City a petition for "*Extra-judicial Foreclosure of Real Estate Mortgage of Spouses Magna B. Badiee and Mohammad Reza Badiee*,"^[10] docketed as FRE No. 04-230, praying for the foreclosure sale of the subject residential lots.

The public auction of the properties scheduled on January 14, 2005 was postponed because of publication error.^[11] On January 18, January 25 and February 1, 2005, plaintiff-appellee caused the publication of the 2nd Notice of Sheriff's Sale,^[12] informing that (i) the four (4) residential lots would be auctioned on February 16, 2005 to settle plaintiffs-appellants' loan obligations as of October 8, 2004 in the amount of P6,992,819.63,^[13] and (ii) if the auction sale on February 16, 2005 did not materialize, the same would be held on February 23, 2005 without need of further notice.

The four (4) residential lots were sold during the public auction on February 23, 2005, with defendant-appellee BPI Family Savings Bank as the only bidder^[14] which bidded P2,409,600.00.^[15] The *Certificate of Sale* was issued by the Clerk of Court and Ex-Officio Sheriff of Parañaque City on March 2, 2005.

The respective versions of the parties, as summarized by the trial court in its Decision dated July 24, 2013, are as follows:

"Plaintiffs Sps. Mohammad Riza Badiie and Magna B. Badiie executed a Real Estate Mortgage dated October 10, 1997 over properties covered by TCT Nos. 130518, 130519, 1305520 and 130521 with an area of 63 sq. m.; 63 sq. m.; 62.94 sq. m.; and 63 sq. m., respectively in consideration of a loan amount of Php. 3,280,000 in favor of then Bank of South East Asia (DBS Bank Philippines Inc. now BPI Family Savings Bank) as evidenced by Promissory notes dated May 08, 1998.

That sometime on October 2004, defendant bank moved for the Extra Judicial Foreclosure of the aforesaid Real Estate Mortgage through the office of the Clerk of Court, Parañaque City, because allegedly, plaintiffs failed to pay the loan despite demand. After which, a Notice of Extra Judicial Foreclosure was allegedly published on Metro Profile Magazine, a newspaper of general circulation dated on January 18, 25, and February 1, 2005 respectively. Subsequently, the Public Auction was held on February 23, 2005. The subject properties were sold to the sole bidder BPI Family Savings Bank. Thereafter the Certificate of Sale was issued in favor of DBS Bank Philippines, Inc. (now BPI Family Savings Bank, Inc.) dated March 2, 2005.

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x x x

Mohammad Reza Badiie testified that BPI Family Savings Bank foreclosed their properties located at No. 5014 Castillo St, Park View Homes, San (sic) Valley Parañaque City covered by TCT Nos. 31018, 31019, 31020 and 31021. That the defendant bank initiated the foreclosure proceedings sometimes in January 14 and February 16, 2004 (sic), however it did not materialize because there was error in publication. On February 23, 2004 (sic), the foreclosure proceeding materialized and only BPI Family Savings Bank participated therein and bid for a total amount of Php2,400,000 plus, although his total obligation with the defendant bank is Php. 3,280,000. He also testified that

defendant bank demanded for him to pay the amount of almost Php 7 million pesos despite the fact that there was no accounting of his loan obligation and he already paid more than Php 2.2 million pesos as shown by the checks he issued (Exh. "A" to "RRRR"). This was received by the defendant bank but these were not credited to his loan obligation. Plaintiffs further testified that when he noticed a change of ownership of the bank, he went there to ask for new account number and for the statement of his loan balance so he could continue paying his amortization. Unfortunately the defendant bank merely told him "we will send you to legal".

He further testified the he also asked the help of Fr. Reuter to talk to the bank owner but it did not materialized. He received a letter from Asset Pool, Inc., informing that it took over the subject properties from the BPI Family Savings Bank. He prayed for moral damages and for attorneys fees for the injustices committed against him and their family as these incidents rendered them homeless and were compelled to litigate to protect their rights.

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x x x

x x x

The defendants presented **LILY COREA** (*sic*) **ULTU**, a Certified Public Accountant and an employee of BPI Family Savings Bank assigned at the head office. She was employed at the bank since 1989 up to present. Since 1992 she was the Account Servicing Officer. She testified that as an Account Servicing Officer she analyzed delinquent accounts one of which is the account of Mohamad Reza Badiie. That based on the record, Sps. Badiie executed a Real Estate Mortgage in favor of DBS, formerly the Bank of South East Asia and later merged to BPI Family Savings Bank. For failure of the plaintiffs to comply with the terms and conditions of the loan, defendant bank filed a petition for the extra judicial foreclosure of the Real Estate Mortgage since based on Statement of Application of Payment, the account was at default. That she verified the correctness of all the entries stated in the Statement of Account as evidenced by her signature (Exh. "15-F" and "15-K") which her staff named Mary Ann prepared. That all payments made by plaintiffs were reflected in their account except for check marked as Exh. "B" which was applied to penalties because it has an annotation of "return check"; check marked as Exhibit "UU" was not applied for payment of the loan because there was an annotation of "miscellaneous payment"; check marked as Exhibits "AAA" was not also applied to the loan because there was no annotation or validation that the same was for payment of monthly amortization. However, check marked as Exhibit "PPP" was reflected on the account.

She further testified that prior to the filing of the petition for extra judicial foreclosure of the Real Estate Mortgage, the bank made demand letters to the plaintiffs dated Sept. 24, 2004, October 28, 2004 and January 20, 2005. She testified also that based on record, plaintiff made telephone conversations with one of bank officers sometime in October 2004. That notice of Sheriff's Sale was issued and there was also posting and publication of the foreclosure sale as evidenced by affidavit of publication (Exh. "9')."^[16]

On February 6, 2006, plaintiffs-appellants filed with the trial court a *Complaint*^[17] against defendant-appellee BPI Family Savings Bank for "Annulment of Extrajudicial Foreclosure of Real Estate Mortgage Proceedings with Damages with T.R.O. and Preliminary Prohibitory Injunction," alleging that (i) the public auction was done without notice and publication as required under Act. No. 3135,^[18] as amended;^[19] (ii) defendant-appellee BPI Family Savings Bank was the only bidder in the public auction, in violation of Section 5,^[20] PROCEDURE IN EXTRA-JUDICIAL FORECLOSURE OF MORTGAGE;^[21] and, (iii) defendant-appellee BPI Family Savings Bank failed to credit the amount paid by plaintiffs-appellants amounting to P2,200,000.00. Plaintiffs-appellants prayed for (i) nullification of the auction sale and certificate of sale; (ii) issuance of a temporary restraining order and eventually a permanent prohibitory injunction enjoining the consolidation of title in favor of defendant-appellee BPI Family Savings Bank; and, (iii) award of attorney's fees.

In an Order dated February 23, 2006,^[22] the trial court denied for lack of merit plaintiffs-appellants' prayer for issuance of a temporary restraining order and a writ of preliminary injunction.

On March 21, 2006, defendant-appellee BPI Family Savings Bank filed its *Answer with Counterclaim*,^[23] alleging that the complaint should be dismissed for lack of cause of action because (i) plaintiffs-appellants were estopped from instituting the complaint since they defaulted in the payment of their obligation despite repeated demands; (ii) as the unpaid creditor/mortgagee, defendant-appellee BPI Family Savings Bank had unquestionable right to foreclose the mortgage and consolidate in its own name the title over the subject properties after plaintiffs-appellants failed to pay the monthly installments due; (iii) the accounting and/or computation of plaintiffs-appellants' account was correct and in accordance with applicable law and the mortgage contract; and, (iv) plaintiffs-appellants failed to comply with the verification requirement under Section 4, Rule 7, Rules of Civil Procedure. As counterclaim, defendant-appellee BPI Family Savings Bank prayed for award of exemplary damages, attorney's fees and expenses of litigation.

On March 24, 2006, plaintiffs-appellants filed their *Answer to Defendant Bank's Counter-claim*,^[24] praying that defendant-appellee BPI Family Savings Bank's counterclaim be dismissed because the expenses it incurred were of its own misdoing.

During pre-trial,^[25] the parties' respective offers for factual stipulation were not admitted by the other.^[26] In the same proceeding, defendant-appellee BPI Family Savings Bank raised the following issues:

" x x x x x x x x x

1. Whether or not the extra-judicial foreclosure over the subject properties is valid; and
2. Whether or not herein defendant bank is entitled attorney's and cost of suit."^[27]

Trial ensued. The lone witness for plaintiffs-appellants was plaintiff-appellant Mohammad Reza Badiie,^[28] while the lone witness for defendant-appellee BPI Family Savings Bank was its Account Servicing Officer Lily Correa Ultu.^[29] On rebuttal, plaintiffs-appellants again presented plaintiff-appellant Mohammad Reza Badiie.^[30]

On July 24, 2013, the trial court rendered a Decision dismissing (i) plaintiffs-appellants' complaint for failure to preponderantly prove their cause of action, and (ii) defendant-appellee BPI Family Savings Bank's counterclaim for failure to prove that the complaint was frivolously and maliciously filed. Thus:

"WHEREFORE, premises considered, for failure of the plaintiff to preponderantly prove that they have a cause of action against the defendant, this case is DISMISSED as well as the defendant's counterclaim.

SO ORDERED."^[31]

Hence, the present appeal^[32] of plaintiffs-appellants, premised on this sole assigned error:

WHETHER OR NOT THE COURT A QUO COMMITTED SERIOUS AND REVERSIBLE ERROR IN DISMISSING THE INSTANT CASE DESPITE OVERWHELMING EVIDENCE TO SUPPORT THE CAUSE OF ACTION OF PLAINTIFFS-APPELLANTS.^[33]

THE ISSUE

Whether the trial court erred in dismissing plaintiffs-appellants' complaint for "Annulment of Extrajudicial Foreclosure of Real Estate Mortgage Proceedings with Damages with T.R.O. and Preliminary Prohibitory Injunction."

THE COURT'S RULING

In upholding the validity of the extrajudicial foreclosure proceedings and dismissing plaintiffs-appellants' complaint for annulment thereof, the trial court noted that (i) as plaintiffs-appellants failed to pay their loan obligations, the foreclosure of the real estate mortgage and auction of subject residential lots was simply an exercise of defendant-appellee BPI Family Savings Bank's right as unpaid creditor-mortgagee; (ii) the notice of public auction was published in a newspaper of general circulation; and, (iii) a public auction is valid even if there was only one (1) bidder. Said the trial court: