

## **SPECIAL THIRTEENTH DIVISION**

**[ CA-G.R. CV No. 101550, November 05, 2014 ]**

**PACIFICO CONCEPCION, PETITIONER-APPELLANT, VS. RURAL  
BANK OF CARDONA (RIZAL), INC., RESPONDENT-APPELLEE.**

### **DECISION**

**DIAMANTE, J.:**

Before Us is an appeal under Rule 41 of the Rules of Court seeking to reverse and set aside the Orders dated May 20, 2011<sup>[1]</sup> and September 28, 2012<sup>[2]</sup> of the Binangonan, Rizal Regional Trial Court, Branch 70, in Civil Case No. 07-031.

In view of respondent-appellee's Manifestation and Compliance filed through registered mail on September 4, 2014,<sup>[3]</sup> the same is hereby noted and considered as substantial compliance with Our Resolution dated August 6, 2014.<sup>[4]</sup> Considering further that no reply<sup>[5]</sup> has been filed on respondent-appellee's Brief, petitioner-appellant is deemed to have waived the filing thereof and thus, the case at bench is hereby declared submitted for decision.

The antecedent facts:

On September 9, 1996, petitioner-appellant obtained a loan for Php350,000.00 from respondent-appellee Rural Bank of Cardona (Rizal), Inc., with interest at the rate of 28% *per annum*, secured by a Real Estate Mortgage<sup>[6]</sup> over his parcel of land located at Binangonan, Rizal covered by TCT No. M-52013.

On November 12, 2001, petitioner-appellant executed a Promissory Note<sup>[7]</sup> for Php175,400.00, payable within 180 days, with interest at 25% per annum after the respondent-appellee granted his request for a restructuring of his outstanding loan balance of Php175,400.00. Upon maturity of the restructured loan on May 10, 2002, petitioner-appellant was not able to pay in full his indebtedness.

Consequently, on March 1, 2005, respondent-appellee filed a Petition for Extrajudicial Foreclosure of Real Estate Mortgage with the Binangonan, Rizal RTC, docketed as File No. 05-041.<sup>[8]</sup> After due publication, the foreclosed property was sold at public auction for Php304,122.00 by the Ex-Officio Sheriff of Binangonan, Rizal RTC on May 13, 2005 and a Certificate of Sale dated June 16, 2005<sup>[9]</sup> was issued to respondent-appellee, being the highest bidder. Title and ownership of the property were consolidated in its name after petitioner-appellant failed to redeem his foreclosed property within the one-year redemption period.

Sometime in July 2007, petitioner-appellant went to respondent-appellee to inquire on how to buy back his foreclosed property. Respondent-appellee's General Manager then gave him his Statement of Account reflecting a total payable amount of

Php969,584.93 as of June 30, 2007.<sup>[10]</sup>

On July 24, 2007, petitioner-appellant sent a letter<sup>[11]</sup> to respondent-appellee's Board of Directors offering to buy back the foreclosed property for Php430,432.08, payable within 90 days. Respondent-appellee, through its President, declined his offer and instead made a counter-offer by giving him a special discount of Php200,000.00, thus reducing his total payables to Php769,584.93.<sup>[12]</sup>

Finding the counter-offer unconscionable, petitioner-appellant decided to file a Petition for Annulment of Extrajudicial Foreclosure Sale with Damages against respondent-appellee before the Binangonan, Rizal RTC on October 17, 2007.

After petitioner-appellant had formally rested his case, respondent-appellee filed a "Motion for Leave to File and Admit Demurrer to Evidence" and "Motion to Dismiss by Way of Demurrer to Evidence." It anchored its Demurrer to Evidence on the following grounds: 1) petitioner-appellant failed to prove any cause of action against it because he failed to show proof that the extrajudicial foreclosure was tainted with fraud, and 2) petitioner-appellant's cause of action, if any, has prescribed.

Petitioner-appellant opposed the above demurrer by averring that he had clearly established his cause of action. The collective acts of respondent-appellee before, during and after the filing of the petition for extrajudicial foreclosure demonstrated a scheme to defraud him. It allegedly imposed excessive interests on his loan, unilaterally increased the interest rate, and failed to notify him of the auction sale. Said petition also was filed within the prescriptive period on October 17, 2007 or within two (2) years after respondent-appellee had allegedly caused the publication and notice of the extrajudicial foreclosure sometime in 2005. Respondent-appellee's Motion to Dismiss by Way of Demurrer to Evidence must be treated as a mere scrap of paper for its counsel violated Bar Matter No. 1922 by failing to indicate in said motion his Mandatory Continuing Legal Education (MCLE) compliance number.

After finding that petitioner-appellant had failed to show a right to the relief demanded, the Binangonan, Rizal RTC, Branch 70, in the assailed Order dated May 20, 2011, resolved to grant the respondent-appellee's Demurrer to Evidence and denied the Petition for Annulment of Extrajudicial Foreclosure Sale for lack of merit.

Petitioner-appellant moved for reconsideration of the aforesaid Order alleging, among others, that respondent-appellee had committed fraud because it failed to comply with the last provision<sup>[13]</sup> of the Certificate of Sale and reiterated respondent-appellee's counsel's non-compliance with Bar Matter No. 1922.

In the Order dated September 28, 2001, the lower court denied petitioner-appellant's motion for lack of merit. Hence, the instant appeal alleging that the lower court erred:

**a) ... in dismissing the petition for annulment of extrajudicial foreclosure sale with damages for lack of merit.**

**b) .... in admitting respondent's Demurrer (*sic*) to evidence considering the latter's non-compliance with Bar Matter No. 1922.**

We are not persuaded.

Jurisprudence dictates that a demurrer to evidence is a motion to dismiss on the ground of insufficiency of evidence and is presented after the plaintiff rests his case. It is an objection by one of the parties in an action to the effect that the evidence which his adversary has produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The evidence contemplated by the rule on demurrer is that which pertains to the merits of the case.<sup>[14]</sup>

After carefully examining the facts and evidence presented, We believe that the lower court did not err in dismissing the petition for annulment of extrajudicial foreclosure sale on the ground that petitioner-appellant had simply failed to show that he is entitled to the relief demanded that would warrant the denial of respondent-appellee's demurrer to evidence. He simply failed to clearly establish that the extrajudicial foreclosure proceedings was tainted with fraud or that respondent-appellee, the Sheriff, or the Clerk of Court did not comply with the procedures for foreclosure under Act No. 3135,<sup>[15]</sup> as amended.

The prevailing jurisprudence in foreclosure proceedings is that foreclosure proceedings have in their favor the presumption of regularity and the burden of evidence to rebut the same is on the petitioner-appellant. A mortgagor who alleges absence of a requisite has the burden of establishing that fact.<sup>[16]</sup>

Petitioner-appellant's allegation that he was not duly notified of the foreclosure sale and the date of redemption thereof is contradicted by his own admission that he failed to inform respondent-appellee in writing of his new address when he went out of the country and resided in Toronto, Canada from 2002 up to 2006.<sup>[17]</sup> As carefully observed by the lower court:

**"Petitioner's own evidence, particularly the third paragraph of the Certificate of Sale dated June 16, 2005 (Exh. F') [sic], also shows that constructive notice may be deemed to have been given herein petitioner only sometime before May 13, 2005, the date of the sale, via the sending of notice to him through registered mail, publication, and posting of the Notice of Sale. Petitioner denies that he actually received said notice through mail, but his own testimony shows that he then moved out of his two residences of record with the bank, and had gone abroad (Toronto, Canada) without giving written notice to the bank. Service of the mail matter to him may then be deemed completed. Petitioner may be deemed to have acquired constructive notice of the foreclosure sale only then, sometime before May 13, 2005, a little more than two years before the filing of the instant petition.**

XXX            XXX            XXX

**Under said item 7 [of the Deed of Real Estate Mortgage], or as much of it as can be read from the copy of the document offered in evidence, the notification was to be made at the address of the**