Supreme Court E-Library

to his employees prior to the sale will not be enforceable against the transferee unless the latter expressly assumed the same, or the sale was made in bad faith (*Fernando vs. Angat Labor Union,* 5 SCRA 251 [1962]; *Cruz vs. Philippine Association of Free Labor Unions (PAFLU),* 42 SCRA 77 [1971]), which circumstances are not obtaining in the case at bar.

PREMISES CONSIDERED, (a) The petition is *GRANTED*; (b) the appealed decision of the NLRC is *REVERSED* and *SET ASIDE* and (c) the complaint against the petitioner DBP is *DISMISSED*.

SO ORDERED.

Melencio-Herrera (Chairperson), Padilla, Sarmiento, and *Regalado, JJ.*, concur.

SECOND DIVISION

[G.R. No. 73678. July 21, 1989]

GUILLERMO CORTES and FLORENCIA P. CORTES, *petitioners, vs.* **THE INTERMEDIATE APPELLATE COURT, ARSENIO REYES, DEVELOPMENT BANK OF THE PHILIPPINES and THE SHERIFF OF KALOOKAN CITY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; FORECLOSURE OF MORTGAGE; DEFAULT IN PAYMENT OF LOAN JUSTIFIES FORECLOSURE UNDER REPUBLIC ACT NO. 3135. — Petitioners defaulted in the payment of their loan to respondent Development Bank of the Philippines (DBP). They actually made only two installment payments. This justifies the

Supreme Court E-Library

subsequent foreclosure sale of the land in issue pursuant to Act 3135, as amended.

2. ID.; ID.; ID.; ID.; PERSONAL NOTICE OF SALE TO THE MORTGAGOR, NOT NECESSARY. — With respect to the requirement of notice, Section 3 of said Act states that notice shall be given by posting notices of the sale for not less than twenty days (20) in at least three (3) 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. It is crystal clear from the above provision that personal notice to the mortgagor is not necessary; only posting and publication, in some cases, are required.

3. CIVIL LAW; CONTRACTS; INSTRUMENTS MUST BE INTERPRETED ACCORDING TO THE SPECIFIC INTENTION OF THE PARTIES. — In pleading their case, petitioners invoke paragraph 10 of the Deed of Mortgage points to a place (which, notably was clearly stated) where all correspondence relative to the mortgage are to be sent, it does not specifically require that personal notice of foreclosure sale be given to petitioner. The said paragraph 10 presumes that a specific correspondence is made but does not definitely require which correspondence must be made. It would, therefore, be erroneous to say that notice of extrajudicial foreclosure to the petitioners is required for such is not the clear intention of the parties, and, thus, may not be pursued. But even if the contrary were true, the sending of "All correspondence relative to this mortgage x x x" to the petitioners may only be deemed, at the most, as an expression of a general intent. As such, it may not prevail against the parties' specific intent that Act No. 3135 be the controlling law between them. This is so since "a particular intent will control a general one that is inconsistent with it."

4. REMEDIAL LAW; EVIDENCE; FINDINGS OF FACT OF THE LOWER AND APPELLATE COURTS, ACCORDED GREAT RESPECT. — Finding of both the lower court and the respondent IAC, to which we accord great respect and give much weight and value.

5. ID.; SPECIAL CIVIL ACTIONS; FORECLOSURE OF MORTGAGE; *PEREZ* CASE (17 SCRA 833), NOT APPLICABLE TO

Supreme Court E-Library

PRESENT CASE. — The case of Perez v. PNB, supra, could not possibly be applied to the case at bar since the former refers to a situation where the mortgagor had died, thus necessitating personal notice to the latter's heirs for reasons of justice and equity to enable the latter to pre-empt the foreclosure sale through seasonable payment or subsequently make a seasonable redemption. In this present case, the mortgagor was very much alive when the foreclosure sale was conducted. And more importantly petitioners were very much aware of their default thus the occurrence of the foreclosure sale depended upon their will.

6. **ID.; ID.; ID.; INADEQUACY OF PRICE, NOT MATERIAL; REASON.** — Where there is a right to redeem, inadequacy of price is not material because the judgment debtor may re-acquire the property or else sell his right to redeem and thus recover any loss he claims to have suffered by reason of the price obtained at the execution sale. Mere inadequacy of the price obtained at the Sheriff's sale unless shocking to the conscience will not be sufficient also to set aside the sale if there is no showing that, in the event of a regular sale, a better price can be obtained. This is based on the theory that the lesser the price the easier it will be for the owner to effect the redemption.

7. **ID.; EVIDENCE; FINDINGS OF FACT OF THE INTERMEDIATE APPELLATE COURT, CONCLUSIVE ON APPEAL.** — Petitioners assail the lower court's decision for not awarding to them the said new house as owners hereof. Considering, however, the findings of fact of the respondent IAC, We are constrained to deny petitioners' plea. Not finding any indiscretion on the part of respondent IAC, its findings of fact are conclusive upon us.

8. **CIVIL LAW; PROPERTY, OWNERSHIP AND ITS MODIFICATIONS; RIGHT OF ACCESSION; OPTION UNDER ARTICLE 448 OF THE CIVIL CODE, AVAILABLE ONLY TO THE OWNER OF THE LAND AND NOT TO THE BUILDER OR PLANTER.** — The option under Art. 448 of the Civil Code, with respect to any other useful improvements, is given to the owner of the land (the private respondent), and not to the petitioners, even assuming the latter acted in good faith.

Supreme Court E-Library

DECISION

PARAS, *J.*:

Sought to be reversed in this petition for review is the Decision* of the then Intermediate Appellate Court (IAC), Fourth Civil Cases Division, affirming *in toto* the findings and conclusions of the then Court of First Instance of Rizal (Kalookan City).

The following pertinent facts can be culled from the findings of the respondent court:

"Plaintiffs' evidence shows that on June 23, 1959 plaintiffs obtained a loan from defendant DBP in the sum of P1,700.00 payable in semi-annual installments for ten (10) years or on or before June 23, 1969. Said loan is evidenced by a promissory note (Exh. A for plaintiff) and was secured by a mortgage (Exh. D) (should be Exhs. 1 and F) over a parcel of land covered by TCT No. 67168 of the Registry of Deeds of Rizal in the name of plaintiffs. The promissory note (Exh. A) states that in case of non-payment of the amount of said note or any portion of it on demand, when due or any other amount or amounts due on account of this note the entire obligation shall become due and demandable. When plaintiffs failed to pay the installments due on the loan after June 23, 1969 (should be June 23, 1959) and after demand letters were sent to them, defendants DBP sent to the Sheriff of Kalookan City an Application for Foreclosure of Real Estate and Chattel Mortgage (Exh. B). Pursuant to the said application, the City Sheriff of Kalookan prepared the notice of extrajudicial sale of mortgaged properties under Act No. 3135 as amended (Exh. C) which notice was duly posted. On April 6, 1966, the date of the auction sale as stated in the notice, the property covered by the mortgage was sold to Mr. Arsenio Reyes as the highest bidder thereof." (pp. 23-24, *Rollo*)

Additionally, petitioners alleged that in 1968, after the auction sale had become final and after a new title over the property in question had already been issued in Arsenio Reyes' name,

---

* Penned by then Associate Justice Abdulwahid Bidin and concurred in by Associate Justices Porfirio V. Sison, Marcelino Veloso, and Ramon Britanico.

Supreme Court E-Library

they, purportedly without knowledge thereof, constructed a new house over the said property. Upon learning for the first time of the said foreclosure sale (*i.e.* when they received a copy of a Writ of Possession from the City Sheriff of Kalookan), petitioners filed a complaint dated 11 March 1969 (*vide*, Record on Appeal, p. 37, *Rollo*) for "Declaration of Nullity of Extrajudicial Foreclosure Sale, Reconveyance, *etc.*, with Damages." In its Decision dated 31 August 1976, the trial court dismissed the aforesaid complaint, prompting an appeal by petitioners to the respondent Court, which court rendered its now questioned decision dated 23 September 1985.

It is presently argued by petitioners that: (1) the extrajudicial foreclosure is invalid and irregular since personal notice thereof was not given to them in their proper residence; (2) they should have been allowed to redeem their property, even after the consolidation of the title thereto in the purchaser's name, in view of the absence of personal notice to them; (3) the petitioners must be considered the owners of the new residential house on the property, erected after title to the same had been consolidated in the purchaser's name; and (4) in case the foreclosure is not valid, petitioners must be considered builders in good faith, thus entitled to the benefits provided in Article 448 of the Civil Code.

1. The petitioners' first and second arguments are devoid of merit. It has been satisfactorily shown that petitioners defaulted in the payment of their loan to respondent Development Bank of the Philippines (DBP). They actually made only two installment payments. This justifies the subsequent foreclosure sale of the land in issue pursuant to Act 3135, as amended. And with respect to the requirement of notice, Section 3 of said Act states:

"Sec. 3. Notice shall be given by posting notices of the sale for not less than twenty days (20) in at least three (3) 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."

Supreme Court E-Library

It is crystal clear from the above provision that personal notice to the mortgagor is not necessary; only posting and publication, in some cases, are required.

But in pleading their case, petitioners invoke paragraph 10 of the Deed of Mortgage (*vide*, p. 28, *Rollo*) which provides:

"10. All correspondence relative to this mortgage, including demand letters, summons, subpoenas, or notification of any judicial or extrajudicial action, shall be sent to the Mortgagor at _____ or at the address that may hereafter be given in writing by the Mortgagor to the Mortgagee."

While the above stipulation points to a place (which, notably was clearly stated) where all correspondence relative to the mortgage are to be sent, it does not specifically require that personal notice of foreclosure sale be given to petitioner. The said paragraph 10 presumes that a specific correspondence is made but does not definitely require which correspondence must be made. It would, therefore, be erroneous to say that notice of extrajudicial foreclosure to the petitioners is required for such is not the clear intention of the parties, and, thus, may not be pursued. (Rule 130, Section 10).

But even if the contrary were true, the sending of "All correspondence relative to this mortgage . . ." to the petitioners may only be deemed, at the most, as an expression of a general intent. As such, it may not prevail against the parties' specific intent that Act No. 3135 be the controlling law between them. This is so since "a particular intent will control a general one that is inconsistent with it." (Rule 130, Sec. 10). It is clear from the Deed of Mortgage that the Mortgagee Bank (DBP) may, under any of the specific circumstances enumerated, proceed to "foreclose this mortgage . . . extrajudicially under Act No. 3135, as amended . . ." (p. 28, *Rollo*). Having invoked the said Act, it shall "govern the manner in which the sale and redemption shall be effected" (Sec. 1, Act 3135). And as already shown earlier Act 3135 does not require personal notice of the foreclosure sale to the mortgagor. Incidentally, it was found by the trial court that notices of the foreclosure sale were duly posted and published in accordance with law. As such, petitioners

Supreme Court E-Library

are in estoppel; they cannot now deny that they were not informed of the said sale.

Banking on their premise of want of personal notice, petitioners now contend that they should be allowed to redeem the property foreclosed as We did so permit in the case of *Perez v. PNB* (17 SCRA 833). In the first place, however there was proper notice to petitioners in compliance with Section 3 of RA 3135. Such is the finding of both the lower court and the respondent IAC, to which we accord great respect and give much weight and value (*Pring v. CA*, 138 SCRA 185; *Rizal Cement Co., Inc. v. Villareal,* 135 SCRA 575). And secondly, the case of *Perez v. PNB, supra*, could not possibly be applied to the case at bar since the former refers to a situation where the mortgagor had died, thus necessitating personal notice to the latter's heirs for reasons of justice and equity to enable the latter to pre-empt the foreclosure sale through seasonable payment or subsequently make a seasonable redemption. In this present case, the mortgagor was very much alive when the foreclosure sale was conducted. And more importantly petitioners were very much aware of their default (see IAC Decision, p. 28-29, *Rollo*) thus the occurrence of the foreclosure sale depended upon their will.

With regard to petitioner's misgiving as to the alleged discrepancy between the purchase price private respondent paid (*i.e.*, ₱2,140.00) and the value of the property, which they estimate to be no less than ₱20,000.00. We concur with the respondent Bank's observations:

"In the first place, the amount of ₱20,000.00 is only an arbitrary valuation placed by the petitioners on the property foreclosed and not supported by any document or evidence to justify such valuation.

"But even assuming the correctness of the valuation placed by the petitioners on the property, the inadequacy of the price at which it was sold at public auction does not invalidate the foreclosure sale. As said by this Honorable Court in the case of DBP v. Moll (43 SCRA 82):

> *"Where there is a right to redeem, inadequacy of price is not material because the judgment debtor may re-acquire the*

Supreme Court E-Library

property or else sell his right to redeem and thus recover any loss he claims to have suffered by reason of the price obtained at the execution sale. Mere inadequacy of the price obtained at the Sheriff's sale unless shocking to the conscience will not be sufficient also to set aside the sale if there is no showing that, in the event of a regular sale, a better price can be obtained. This is based on the theory that the lesser the price the easier it will be for the owner to effect the redemption." (Comment, p. 41, *Rollo*)

2. Petitioners represent that in 1968, after the foreclosure sale and following the issuance of a new title to the property in private respondent's name (as purchaser), they constructed a new residential house worth at least ₱6,000.00, being unaware of said sale and transfer of ownership. In the light of said circumstance, petitioners assail the lower court's decision for not awarding to them the said new house as owners thereof. Considering, however, the findings of fact of the respondent IAC, We are constrained to deny petitioners' plea. Not finding any indiscretion on the part of respondent IAC, its findings of fact are conclusive upon us (*Pring v. CA, supra*; *Premier Insurance and Surety Corporation v. IAC*, 141 SCRA 423; *Vda. de Roxas v. IAC*, 143 SCRA 77; *People v. Canada*, 144 SCRA 121). Thus, the IAC said:

"Finally, We find no merit in plaintiffs' contention that the lower court erred in not declaring plaintiff as owner of the new residential house allegedly erected on the land in 1968 or after the auction sale on April 6, 1966. There is no evidence that plaintiff constructed a new house in 1968 on the mortgaged premises other than plaintiffs' own self-serving testimony. Plaintiffs did not even declare the said house for taxation nor pay the taxes thereon. Neither had plaintiff informed defendant DBP and/or secured the latter's consent to the construction of the alleged new house. Paragraph 9 of the Mortgage Contract stipulates that the mortgagor shall not make any alteration upon or demolish any building or buildings herein mortgaged without the prior written consent of the mortgagees" (IAC Decision, p. 30, *Rollo*).

In view of what has been said in the preceding paragraphs, We find it needless to discuss the third assigned error, except

Supreme Court E-Library

to say that the option under Art. 448 of the Civil Code, with respect to any other useful improvements, is given to the owner of the land (the private respondent), and not to the petitioners, even assuming the latter acted in good faith. Note that here, the private respondent has not even acted yet on his option.

WHEREFORE, considering the above, we hereby *DENY* the present petition and *AFFIRM* the ruling of the respondent Intermediate Appellate Court.

SO ORDERED.

Melencio-Herrera (Chairperson), Padilla, Sarmiento, and *Regalado, JJ.*, concur.

THIRD DIVISION

[G.R. No. L-47981. July 24, 1989]

JUAN V. SABINOSA, *petitioner, vs.* **THE HONORABLE COURT OF APPEALS, BIENVENIDO F. BUNYI, and MARIANITO P. BAUTISTA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; ACTIONS; PARTIES; A PARTY TO WHOM THE DECISION HAS BECOME FINAL NEED NOT BE INCLUDED AS PARTY ON APPEAL.** — Marianito P. Bautista should not be named as respondent in the instant review since it was only Sabinosa who had interposed an appeal to the Court of Appeals which in turn sustained the judgment of the trial court. Hence, as to Bautista, the trial court's decision had long become final and executory.

2. **ID.; EVIDENCE; FINDINGS OF FACT OF THE COURT OF APPEALS, GENERALLY NOT DISTURBED ON APPEAL; EXCEPTIONS.** — It is an established principle that the factual