



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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FIRST DIVISION

**SPOUSES FLAVIO P.
 BAUTISTA and ZENAIDA
 L. BAUTISTA,**

Petitioners,

- versus -

**PREMIERE DEVELOPMENT
 BANK; and ATTY. PACITA
 ARAOS, Senior Assistant Vice
 President & Acting Head of
 Legal and Collection Group,
 PREMIERE DEVELOPMENT
 BANK,**

Respondents.

G.R. No. 201881

Present:

LEONARDO-DE CASTRO, C.J.,
 Chairperson,

**BERSAMIN,
 *DEL CASTILLO,
 JARDELEZA, and
 TIJAM, JJ.

Promulgated:

SEP 05 2018

[Signature]

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DECISION

BERSAMIN, J.:

The publication and posting of the notice of the *rescheduled* extrajudicial foreclosure sale are mandatory and jurisdictional. The ensuing foreclosure sale held without the publication and posting of the notice is void *ab initio*. This is because the requirements of publication and posting emanate from public policy considerations, and are not for the benefit of the parties to the mortgage.

The Case

The petitioners assail the decision promulgated on January 27, 2012,¹ whereby the Court of Appeals (CA) affirmed the adverse judgment rendered

* On official leave.

** On official leave.

¹ *Rollo*, pp. 92-98; penned by Associate Justice Japar B. Dimaampao, with the concurrence of Associate Justice Samuel H. Gaerlan and Associate Justice Danton Q. Bueser.

in Civil Case No. 1792 on February 8, 2008 by the Regional Trial Court, Branch 77, in San Mateo, Rizal dismissing their complaint for the annulment of the extrajudicial foreclosure sale of their property.²

Antecedents

The petitioners are the registered owners of the parcel of land located in Rodriguez, Montalban, Rizal, with an area of 1,248 square meters, and covered by Transfer Certificate of Title (TCT) No. 150668 of the Registry of Deeds of Marikina City.³

On January 7, 1994, the petitioners obtained a loan of ₱500,000.00 from respondent Premiere Development Bank (Premiere Bank) for which they executed the corresponding promissory note. To secure the performance of their obligation, they also executed a real estate mortgage over the abovestated parcel of land and its improvements.⁴ The loan agreement stipulated that the obligation would be payable in three years through monthly amortizations of ₱20,412.51, subject to interest and penalty charges as follows:

(a) Floating rate renewable monthly with an initial interest rate of 27% per annum;

(b) In addition to the aforesaid stipulated interest, penalty charges of 24% per annum on any unpaid principal/amortization/installment/interest/advances and other charges due to be computed from date of default until full payment of obligation;

(c) Penalty in the amount equivalent to 3% of the outstanding balance of the loan if said loan is pre-terminated or paid before maturity date.⁵

Premiere Bank collected the monthly amortizations by debiting the same from the petitioners' savings account.⁶

For failure of the petitioners to settle their obligation in full, the sheriff sent the first notice of extrajudicial foreclosure sale to them on October 17, 1995, informing that the mortgaged property would be sold in a public sale to be conducted on November 17, 1995.⁷ The petitioners requested the postponement of the scheduled sale as well as a detailed computation of their

² CA *rollo*, pp. 138-150; penned by Judge Francisco C. Rodriguez.

³ Records, pp. 314-315.

⁴ Id. at 49-52.

⁵ CA *rollo*, p. 266.

⁶ Records Volume II, p.273.

⁷ Records, p. 180.

outstanding obligations several times, as borne out by the exchange of letters between them and Premiere Bank.⁸

On December 6, 2001, the sheriff prepared sent notice of the extrajudicial foreclosure sale to be held on January 15, 2002.⁹ The notice was published in *The Challenger News*, a newspaper of general circulation in the Province of Rizal, in the issues of December 10, 17, and 24, 2001.¹⁰ The sheriff posted the notice of the sale in public places within San Mateo, Rizal and in the place where the property was located. However, the sale did not push through as scheduled because the representative of Premiere Bank did not appear, and was rescheduled to February 18, 2002.¹¹

Although no publication and posting of the notice of the rescheduled date of February 18, 2002 were made thereafter,¹² the sheriff conducted the foreclosure sale on February 18, 2002, and struck off the property of the petitioners to Premiere Bank as the lone bidder.¹³ The sheriff issued the certificate of sale in the name of Premiere Bank, and the same was annotated on the original copy of TCT No. 150668 on November 7, 2002. The statement of account indicated that the petitioners' outstanding obligation totalled ₱2,062,254.26 as of February 18, 2002.¹⁴

The petitioners redeemed the property within the required period by tendering the amount of ₱401,820.00.¹⁵ The sheriff issued the certificate of redemption in their name, but Premiere Bank refused to accept the redemption price because their total unpaid outstanding obligation had accumulated to ₱2,062,254.26. Premiere Bank then consolidated its ownership, and the Register of Deeds of Marikina City issued TCT No. 452198 in the name of Premiere Bank.¹⁶

Judgment of the RTC

On November 6, 2003, the petitioners sued the respondents in the RTC to seek the annulment of the sheriff's foreclosure sale held on February 18, 2002 on the ground of the failure of the respondents to comply with the mandatory and jurisdictional requirements of publication and posting of the notice of sale in accordance with Act No. 3135 (docketed as Civil Case No. 1792).¹⁷ They also prayed that the RTC should order the determination of the

⁸ Id. at 201-208.

⁹ Id. at 27.

¹⁰ Id. at 195.

¹¹ Id. at 197.

¹² Id. at 65.

¹³ Id. at 198.

¹⁴ Id. at 164-165.

¹⁵ Id. at 320.

¹⁶ *Rollo*, p. 93.

¹⁷ Records, pp. 1-9.

correct and lawful interest and penalty charges due from them.

On February 8, 2008, the RTC rendered judgment dismissing the petitioners' complaint.¹⁸

In upholding the extrajudicial foreclosure sale despite the lack of publication and posting of the notice of the public sale held on February 18, 2002, the RTC observed:

While it is true that there was no republication and reposting of the notice of the auction sale held on 18 February 2002, wherein the subject property was awarded to the lone bidder, defendant Premiere Development Bank, Inc., it appears that plaintiffs-mortgagors voluntarily waived the same when they asked for a series of postponement as shown by a number of letters by petitioner-mortgagor Flavio Bautista.¹⁹

The RTC considered the petitioners estopped from assailing the validity of the foreclosure sale, stating that:

Moreover, considering that plaintiffs tried to redeem the property in the amount of ₱401,820.00, which is way below the amount of their outstanding obligation, they are estopped from questioning the validity of the auction sale and cannot now claim that there were irregularities in the conduct of the same.²⁰

The RTC declared that the imposition of onerous and exorbitant interests and penalty charges did not occur considering that the parties had mutually agreed on the payment of interest and penalties; and that they had also freely stipulated on the interest rate to be floating and reviewable monthly.²¹

Decision of the CA

The petitioners appealed, asserting that the RTC had gravely erred, viz: (1) when it did not declare as null and void the extrajudicial foreclosure sale held on February 18, 2002 despite the non-compliance with the mandatory requirements of publication and posting of the notice of the rescheduled sale; (2) in ruling that they had waived the mandatory requirements by seeking a series of postponements of the sale; (3) in holding that they were estopped from assailing the sale by their effort to redeem the property; (4) in finding that they had not fully settled their obligation, and in giving due weight and credit to the computation sheets belatedly prepared by Premiere Bank; (5) in

¹⁸ CA *rollo*, pp. 30-42.

¹⁹ Id. at 42.

²⁰ Id.

²¹ Id. at 41.

refusing to rule on Premiere Bank's violation of the *Truth in Lending Act*; (6) in not declaring that a valid redemption had been made; and (7) in declaring that they had not proved their cause of action.²²

On January 27, 2012, the CA promulgated the assailed decision,²³ affirming the validity of the February 18, 2002 foreclosure sale despite the non-posting and non-publication of the notice of the rescheduled sale.²⁴ It stated that the petitioners were estopped from challenging the validity of the extrajudicial proceedings because they did not seek judicial relief therefrom, and because they redeemed the foreclosed property and tendered the redemption price without any condition or reservation.²⁵ It upheld the interests and penalty charges imposed on the petitioners because "the *Promissory Note* explicitly provides for the imposition of interest, penalties and other charges in case appellants failed or defaulted in their loan obligation."²⁶ It found that no irregularities had attended the loan transaction between the parties, to wit:

In the case at bar, there is no showing that there were irregularities in the (appellants') loan transactions with the bank. The parties in this case as evidenced by the Promissory Note and other loan documents *have mutually agreed to the payment of interest, past due interest and penalties in case the borrowers defaulted to pay their loan obligation on the stipulated date. It is likewise stipulated therein that the interest rate is floating and reviewable monthly.* Considering that the (appellants) defaulted in their monthly amortization, their subsequent payments shall be first applied on the accrued interest and penalties and thereafter to the principal loan. If the debt produces interest, payment of the principal shall not be deemed to have been made until the interest have been covered (Art 1253 of the New Civil Code). *x x x (Appellants) have agreed with the (appellee) that the interest rate was subject to a possible escalation or deescalation without advanced notice to them in the event the law or the Monetary Board prescribed a change in the interest rate.*²⁷

The petitioners moved for reconsideration, but the CA denied their motion on May 9, 2012 because it had already passed upon.²⁸

Issues

The issues being now presented by the petitioners for our consideration and resolution can be stated as follows:

²² *Rollo*, pp. 94-95.

²³ *Id.* at 92-98.

²⁴ *Id.* at 95.

²⁵ *Id.* at 96.

²⁶ *Id.*

²⁷ *Id.* at 97-98.

²⁸ *Id.* at 101-102.

1. Whether or not the CA erred in declaring that the extrajudicial foreclosure sale was valid despite the failure to publish and post the notice of the rescheduled foreclosure sale;
2. Whether or not the petitioners were estopped from impugning the foreclosure sale by their effort to redeem the property; and
3. Whether or not the loan obligation had already been fully settled by the petitioners.

Ruling of the Court

The appeal is partly meritorious.

1.

The extrajudicial foreclosure sale held on February 18, 2002 was void *ab initio*

Act No. 3135²⁹ prescribes the requirements of posting and publication of the notice for the extrajudicial foreclosure sale. The law specifically mandates the publication of the notice in a newspaper of general circulation for at least three consecutive weeks if the value of the property is more than ₱400,000.00. Its Section 3 states:

Section 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three 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 the city.** [Bold underscoring supplied for emphasis]

The requirements for the posting and publication of the notice for the extrajudicial foreclosure sale set on January 15, 2002 were complied with by posting the notice in public places in Rizal and in the place where the property of the petitioners was located, and by publishing the notice in *The Challenger News*, a newspaper of general circulation in Rizal. However, the sale set on January 15, 2002 did not push through because the representative of Premiere Bank did not appear, and was rescheduled to February 18, 2002. Thereafter, the notice for the *rescheduled* foreclosure sale was not posted and published as required by Act No. 3135.

²⁹ Entitled *An Act to Regulate the Sale of Property Under Special Powers Inserted In or Annexed to Real Estate Mortgages*.

We hold that the invalidity of the public sale of the petitioners' property sprang from such non-compliance with the requirements under Act No. 3135.

In its decision, the CA, citing *Perez v. Court of Appeals*³⁰ to the effect that act of redemption was an implied admission of the regularity of the sale, declared the petitioners herein estopped from assailing the extrajudicial foreclosure sale held on February 18, 2002 by their act of redeeming the property and tendering the redemption price. Accordingly, Premiere Bank submits that the foreclosure sale held on February 18, 2002 should be upheld.

We cannot concur with the CA's decision.

To begin with, the reliance by the CA on *Perez v. Court of Appeals* was patently misplaced. The Court considered therein the respondents' pleas for extension of the time to redeem the foreclosed property as a waiver of the defects and irregularities that had attended the foreclosure proceedings. A careful reading of *Perez v. Court of Appeals* discloses, however, that the defects and irregularities during the foreclosure proceedings adverted to therein were limited to the erroneous computation of the balance on the respondents' unsettled account and to the lack of notice of sale to the respondents prior to the conduct of the sale. The Court did not directly address and resolve therein whether or not the foreclosure sale was valid despite the failure to publish or to post the notice of the *postponed* sale. In contrast, the irregularity being assailed herein related to the non-compliance with the posting and publication requirements mandated by Act No. 3135. Clearly, the ruling in *Perez v. Court of Appeals* was not relevant and authoritative in this adjudication.

Secondly, the requirements for posting and publication under Act No. 3135 were mandatory and jurisdictional. We have held that statutory provisions governing the publication of notice of mortgage foreclosure sales must be strictly complied with; hence, even slight deviations from the requirements would invalidate the notice and render the sale *at least* voidable.³¹ The objective of the notice requirements is to achieve a "reasonably wide publicity" of the public sale so that whoever may be interested may know of and attend the public sale. This is the reason why the publication must be made in a newspaper of general circulation. The Court has previously taken judicial notice of the "far-reaching effects" of publishing the notice of sale in a newspaper of general circulation. As such,

³⁰ G.R. No. 157616, July 22, 2005, 464 SCRA 89, 110.

³¹ *Philippine National Bank v. Nepomuceno Productions, Inc.*, G.R. No. 139479, December 27, 2002, 394 SCRA 405, 412.

the publication of the notice of sale in a newspaper of general circulation is essential to the validity of the foreclosure proceedings.³² To allow the parties to waive the jurisdictional requirement can convert into a private sale what ought to be a public auction.³³

In *Philippine National Bank v. Nepomuceno Productions, Inc.*,³⁴ the Court has expounded on the significance and primary purpose of the requirements for the posting of the notice of the sale and its publication in a newspaper of general circulation, *viz.*:

The principal object of a notice of sale in a foreclosure of mortgage is not so much to notify the mortgagor as to inform the public generally of the nature and condition of the property to be sold, and of the time, place, and terms of the sale. **Notices are given to secure bidders and to prevent a sacrifice of the property. Clearly, the statutory requirements of posting and publication are mandated, not for the mortgagor's benefit, but for the public or third persons. In fact, personal notice to the mortgagor in extrajudicial foreclosure proceedings is not even necessary, unless stipulated. As such, it is imbued with public policy consideration and any waiver thereon would be inconsistent with the letter and intent of Act No. 3135.**³⁵ [Bold emphasis supplied]

The petitioner in *Philippine National Bank v. Nepomuceno Productions Inc.* had sought the extrajudicial foreclosure of the respondents' mortgaged properties. The sheriff initially set the foreclosure sale on August 12, 1976, but the sale was rescheduled several times without publishing the notice of the rescheduled sale. The sale finally proceeded on December 20, 1976, and the petitioner turned out to be the highest bidder. The respondents sued to nullify the sale. The Court declared the sale void for non-compliance with the requirements under Act No. 3135 for the posting and publication of the notice of sale, ruling thusly:

We also cannot accept petitioner's argument that respondents should be held in *estoppel* for inducing the former to re-schedule the sale without need of republication and reposting of the notice of sale.

Records show that respondents, indeed, requested for the postponement of the foreclosure sale. That, however, is all that respondents sought. Nowhere in the records was it shown that respondents purposely sought re-scheduling of the sale *without need of republication and reposting of the notice of sale*. To request postponement of the sale is one thing; to request it without need of compliance with the statutory requirements is another. Respondents, therefore, did not commit any act

³² *Metropolitan Bank and Trust Company v. Miranda*, G.R. No. 187917, January 19, 2011, 640 SCRA 273, 283; *Development Bank of the Philippines v. Court of Appeals*, G.R. No. 125838, June 10, 2003, 403 SCRA 460, 470.

³³ *Philippine National Bank v. Maraya, Jr.*, G.R. No. 164104, September 11, 2009, 599 SCRA 394, 400.

³⁴ *Supra*, note 31.

³⁵ *Id.* at 411.

that would have estopped them from questioning the validity of the foreclosure sale for non-compliance with Act No. 3135.³⁶

It was, therefore, wrong and presumptuous for Premiere Bank to justify the non-compliance with the requirements of posting and publication by reminding that the petitioners had themselves requested the series of postponements of the sale. We have already settled that the compliance with the requirements for posting and publication of the notice of the *rescheduled* sale was essential to the validity of the sale. The compliance could not be waived by either of the parties to the mortgage by reason of its being based on public policy considerations. As such, the statutory requirements of posting and publication of the notice were not intended for the protection of the parties to the mortgage but for the benefit of third persons. The foreclosure proceedings are undeniably imbued with public policy considerations, and any waiver made in connection therewith would be inconsistent with the intent and letter of Act No. 3135.³⁷

In light of the essentiality of the compliance with the notice requirements under Act No. 3135, the argument by Premiere Bank that it should not be responsible for the lack of posting and publication of the notice of the rescheduled sale because the conduct of the foreclosure sale was entirely under the control of the sheriff, and because its only participation in the proceedings was to pay the expenses of the publication as determined by the sheriff³⁸ was really of no consequence.

And, thirdly, that the respondent sheriff was entitled to be presumed to have regularly performed his official duties in conducting the foreclosure proceedings, as Premiere Bank has urged,³⁹ did not validate the sale. Such presumption could not excuse the non-compliance with the mandatory and jurisdictional requirements of Act No. 3135. At any rate, the disputable presumption of regularity could not even be extended to the respondent sheriff in view of the lack of posting and publication being sufficiently established by the admissions of the parties and their evidence.

In view of the foregoing, the declaration of the February 18, 2002 sale as void *ab initio* is fully warranted.

2.

The petitioners' liability to Premiere Bank, being a factual matter, cannot be determined by the Court

³⁶ Id. at 412-413 (italicized portions are in the original text).

³⁷ Id.

³⁸ *Rollo*, p. 153.

³⁹ Id. at 154.

The last issue being raised herein is whether or not the loan obligation of the petitioners was fully settled. In this regard, the parties ostensibly disagreed, with the petitioners insisting that they were liable only for ₱401,820.00, the amount they actually tendered to the respondent sheriff in their effort to redeem the property but Premiere Bank belying the adequacy of their tender through its claim of their outstanding obligation already totaling ₱2,062,254.26 as of February 18, 2002. Such issue is a factual one that the Court cannot review and resolve through this mode of appeal.

Accordingly, the petitioners' appeal of this issue should be disallowed for being in contravention of Section 1,⁴⁰ Rule 45 of the *Rules of Court*, which limited the appeal to questions of law that the petitioners must distinctly set forth. The limitation to questions of law is observed because the Court is not a trier of fact.

WHEREFORE, the Court **PARTIALLY GRANTS** the petition for review on *certiorari*; and **MODIFIES** the decision promulgated on January 27, 2012 by:

(1) **DECLARING NULL AND VOID**: (a) the foreclosure sale held on February 18 2002 of the property located in Rodriguez, Montalban, Rizal to Premiere Development Bank; and (b) the issuance of Transfer Certificate of Title No. 452198 of the Register of Deeds of Marikina City issued in the name of Premiere Bank;

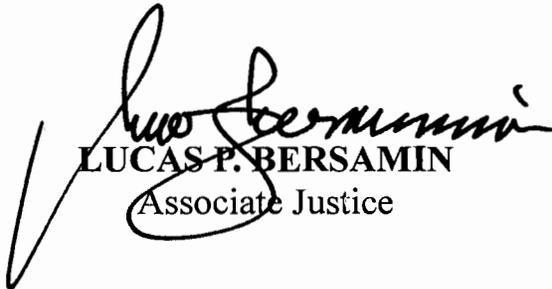
(2) **DIRECTING** the Register of Deeds of Marikina City **TO CANCEL** Transfer Certificate of Title No. 452198 issued in the name of Premiere Development Bank; and **TO REINSTATE** Transfer Certificate of Title No. 150668 issued in the name of petitioners Spouses Flavio P. Bautista and Zenaida L. Bautista; and

(3) **ORDERING** the respondents to comply with the requirements of posting and publication of the extrajudicial foreclosure sale of the petitioners' property.

⁴⁰ Section 1. *Filing of petition with Supreme Court*.—A party desiring to appeal by certiorari from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and **shall raise only questions of law, which must be distinctly set forth**. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

No pronouncement on costs of suit.

SO ORDERED.


LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:


TERESITA J. LEONARDO-DE CASTRO
Chief Justice

(On Official Leave)
MARIANO C. DEL CASTILLO
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice

(On Official Leave)
NOEL GIMENEZ TIJAM
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


TERESITA J. LEONARDO-DE CASTRO
Chief Justice