



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

ATTY. LEO N. CAUBANG,  
Petitioner,

G.R. No. 174581

Present:

VELASCO, JR., J., *Chairperson*,  
PERALTA,  
VILLARAMA, JR.,  
REYES, and  
JARDELEZA, JJ.

- versus -

JESUS G. CRISOLOGO and  
NANETTE B. CRISOLOGO,  
Respondents.

Promulgated:

February 4, 2015

X-----*Rufin S. Hizon*-----X

DECISION

PERALTA, J.:

For the Court's resolution is a Petition for Review under Rule 45 of the Rules of Court which petitioner Atty. Leo N. Caubang filed, questioning the Decision<sup>1</sup> of the Court of Appeals (CA), dated May 22, 2006, and its Resolution<sup>2</sup> dated August 16, 2006 in CA-G.R. CV. No. 68365. The CA affirmed the Decision<sup>3</sup> of the Regional Trial Court (RTC) of Davao City, Branch 12, dated August 1, 2000, with modifications, in Civil Case No. 27168-99.

The facts, as gathered from the records, are as follows:

<sup>1</sup> Penned by Associate Justice Teresita Dy-Liacco Flores, with Associate Justices Rodrigo F. Lim, Jr. and Ramon R. Garcia; concurring; *rollo*, pp. 14-28.

<sup>2</sup> *Id.* at 35-36.

<sup>3</sup> Penned by Judge Paul T. Arcangel; *id.* at 37-45.

On December 17, 1993, respondents spouses Jesus and Nannette Crisologo (*the Spouses Crisologo*) obtained an Express Loan in the amount of ₱200,000.00 from PDCP Development Bank Inc. (*PDCP Bank*). On January 26, 1994, the Spouses Crisologo acquired another loan from the same bank, this time a Term Loan of ₱1,500,000.00 covered by a Loan Agreement. As security for both loans, the spouses mortgaged their property covered by Transfer Certificate of Title (*TCT*) No. T-181103. Upon release of the Term Loan, they were given two (2) promissory notes, for the amount of ₱500,000.00 on February 9, 1994 and ₱1,000,000.00 on February 21, 1994.

Under the promissory notes, the Spouses Crisologo agreed to pay the principal amount of the loan over a period of three (3) years in twelve (12) equal quarterly amortizations. Although they were able to pay the Express Loan, starting August 22, 1994, however, or after payment of the first few installments on the other loans, the spouses defaulted in the amortizations. Despite several demands made by the bank, the spouses still failed to pay.

On May 31, 1996, the spouses received a detailed breakdown of their outstanding obligation. Finding the charges to be excessive, they wrote a letter to the bank proposing to pay their loan in full with a request that the interest and penalty charges be waived. The manager of PDCP Bank, Davao Branch, advised them to deposit their ₱1,500,000.00 obligation as manifestation of their intent to pay the loan. As a counter-offer, the spouses agreed to deposit the amount but on the condition that the bank should first return to them the title over the mortgaged property. The bank did not reply until July 7, 1997, where they sent a letter denying the spouses' counter-offer and demanding payment of the loan already amounting to ₱2,822,469.90. By October 20, 1997, the debt had ballooned to ₱3,041,287.00. For failure to settle the account, the Davao branch of the bank recommended the foreclosure of the mortgage to its head office. On March 20, 1998, PDCP Bank filed a Petition for the Extrajudicial Foreclosure of the Mortgage.

On June 8, 1998, petitioner Leo Caubang, as Notary Public, prepared the Notices of Sale, announcing the foreclosure of the real estate mortgage and the sale of the mortgaged property at public auction on July 15, 1998. He caused the posting of said notices in three (3) public places: the Barangay Hall of Matina, City Hall of Davao, and Bangkerohan Public Market. Publication was, likewise, made in the *Oriental Daily Examiner*, one of the local newspapers in Davao City.

On July 15, 1998, Caubang conducted the auction sale of the mortgaged property, with the bank as the only bidder. The bank bid for ₱1,331,460.00, leaving a deficiency of ₱2,207,349.97. Thereafter, a Certificate of Sale in favor of the bank was issued.

Later, the Spouses Crisologo were surprised to learn that their mortgaged property had already been sold to the bank. Thus, they filed a Complaint for Nullity of Extrajudicial Foreclosure and Auction Sale and Damages against PDCP Bank and Caubang.

On August 1, 2000, the Davao RTC rendered a Decision nullifying the extrajudicial foreclosure of the real estate mortgage for failure to comply with the publication requirement, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered:

1. Declaring the Extra-Judicial Foreclosure sale of plaintiffs' property, covered by TCT No. T-181103, null and void.

2. Ordering the Register of Deeds for the City of Davao to cancel Entry No. 113255 on TCT No. T-181103, the entry relative to the Certificate of Sale executed by Atty. Leo Caubang on August 5, 1998, and if a new title has been issued to defendant PDCP, to cancel the same, and to reinstate TCT No. T-181103 in the name of Nannette B. Crisologo, of legal age, Filipino, married to Jesus Crisologo, and a resident of Davao City, Philippines.

All the other claims of the parties are disallowed.

No pronouncement as to costs.

SO ORDERED.<sup>4</sup>

The Spouses Crisologo appealed before the CA, seeking a partial modification of the RTC Decision, insofar as their claims for moral and exemplary damages, attorney's fees, and costs of suit were concerned. On May 22, 2006, the appellate court modified the decretal portion to read:

WHEREFORE, judgment is hereby rendered:

1. Declaring the Extra-Judicial Foreclosure sale of plaintiffs' property, covered by TCT # T-181103, null and void.

2. Ordering the Register of Deeds for the City of Davao to cancel Entry No. T-181103, the entry relative to the Certificate of Sale executed by Atty. Leo Caubang on August 5, 1998, and if a new title has been issued to defendant PDCP, to cancel the same, and to reinstate TCT No.

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<sup>4</sup>

*Rollo*, p. 45.

T-181103 in the name of Nannette B. Crisologo, of legal age, Filipino, married to Jesus Crisologo, and a resident of Davao City, Philippines; and

3. Atty. Caubang is ordered to pay appellants the sum of ₱41,500.00 as attorney's fees and ₱30,248.50 as litigation expenses.

All other claims of the parties are disallowed.

SO ORDERED.<sup>5</sup>

Caubang filed a Motion for Reconsideration, but the same was denied. Hence, he filed the present petition.

Caubang mainly assails the CA's ruling on the publication of the notices in the *Oriental Daily Examiner*. He firmly contends that the CA's finding was based on assumptions and speculations.

The petition lacks merit.

Under Section 3 of Act No. 3135:<sup>6</sup>

Section 3. *Notice of sale; posting; when publication required.* – 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 **notices shall also be published** once a week for at least three consecutive weeks **in a newspaper of general circulation in the municipality or city.**<sup>7</sup>

Caubang never made an effort to inquire as to whether the *Oriental Daily Examiner* was indeed a newspaper of general circulation, as required by law. It was shown that the *Oriental Daily Examiner* is not even on the list of newspapers accredited to publish legal notices, as recorded in the Davao RTC's Office of the Clerk of Court. It also has no paying subscribers and it would only publish whenever there are customers. Since there was no proper publication of the notice of sale, the Spouses Crisologo, as well as the rest of the general public, were never informed that the mortgaged property was about to be foreclosed and auctioned. As a result, PDCP Bank became the sole bidder. This allowed the bank to bid for a very low price (₱1,331,460.00) and go after the spouses for a bigger amount as deficiency.

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<sup>5</sup> *Id.* at 27.

<sup>6</sup> Entitled AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES.

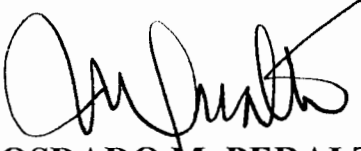
<sup>7</sup> Emphasis ours.

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 prevent a sacrifice of the property. Therefore, statutory provisions governing publication of notice of mortgage foreclosure sales must be strictly complied with and slight deviations therefrom will invalidate the notice and render the sale, at the very least, voidable. Certainly, the statutory requirements of posting and publication are mandated and imbued with public policy considerations. Failure to advertise a mortgage foreclosure sale in compliance with the statutory requirements constitutes a jurisdictional defect, and any substantial error in a notice of sale will render the notice insufficient and will consequently vitiate the sale.<sup>8</sup>


Since it was Caubang who caused the improper publication of the notices which, in turn, compelled the Spouses Crisologo to litigate and incur expenses involving the declaration of nullity of the auction sale for the protection of their interest on the property, the CA aptly held that Caubang shall be the one liable for the spouses' claim for litigation expenses and attorney's fees.

**WHEREFORE**, the petition is **DENIED**. The Decision of the Court of Appeals, dated May 22, 2006, and its Resolution dated August 16, 2006, in CA-G.R. CV. No. 68365, are hereby **AFFIRMED**.

**SO ORDERED.**


  
**DIOSDADO M. PERALTA**  
Associate Justice

**WE CONCUR:**

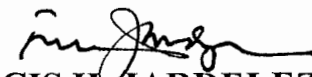
  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson

<sup>8</sup>

*PNB v. Nepomuceno Productions, Inc.*, 442 Phil. 635, 664 (2002).


  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

  
**BIENVENIDO L. REYES**  
Associate Justice

  
**FRANCIS H. JARDELEZA**  
Associate Justice

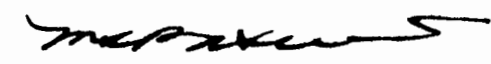
### ATTESTATION

I attest 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.

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson, Third Division

### 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.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice