



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

BANK OF THE PHILIPPINE ISLANDS (formerly Prudential Bank)

Petitioner,

G.R. No. 195272

Present:

-versus-

SERENO, C. J.,
 Chairperson,
 LEONARDO-DE CASTRO,
 BERSAMIN,
 PEREZ, and
 PERLAS-BERNABE, JJ.

SPOUSES DAVID M. CASTRO and CONSUELO B. CASTRO,
 Respondents.

Promulgated:

JAN 14 2015

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DECISION

PEREZ, J.:

For resolution is the petition for review on *certiorari* assailing the Decision¹ dated 26 November 2009 of the Court of Appeals, Special Sixth Division in CA-G.R. CV No. 88870 and the Resolution² dated 14 January 2011 of the Court of Appeals, Second Division denying the motion for reconsideration, which reversed and set aside the judgment³ rendered by the Regional Trial Court of Quezon City, Branch 97 (RTC) dismissing the complaint for Declaration of Nullity of Sheriff's Certificate of Sale and Damages against Prudential Bank.

¹ Penned by Associate Justice Arcangelita M. Romilla-Lontok with Associate Justices Arturo G. Tayag and Sixto C. Marella, Jr., concurring. *Rollo*, pp. 32-38.

² Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Celia C. Librea-Leagogo and Michael P. Elbinias, concurring. *Id.* at 40-43.

³ Penned by Judge Bernelito R. Fernandez. *CA rollo*, pp. 14-21.

The Complaint has its origins from the two loans contracted by respondent Spouses David M. Castro (David)⁴ and Consuelo B. Castro (Consuelo) from Prudential Bank in the amounts of ₱100,000.00 and ₱55,000.00 in July and August 1987. The first loan's maturity date was on 18 January 1988 while the second loan had a maturity date of 23 February 1988. The ₱100,000.00 loan was secured by a Real Estate Mortgage (REM) over petitioners' property located in Quezon City and covered by Transfer Certificate of Title (TCT) No. 364277 while the ₱55,000.00 loan was secured by another REM over two parcels of land located in Alaminos, Laguna covered by TCT Nos. T-2225 and T-2226, registered in the name of David's mother, Guellerma Malabanan.

The loans remained unpaid as of 30 April 1996 and the balances ballooned to ₱290,205.05 on the ₱100,000.00 loan and ₱96,870.20 on the ₱55,000.00 loan. Prudential Bank, through counsel, filed two separate petitions for foreclosure of the mortgage. In their first petition, Prudential Bank admitted that through inadvertence, the photocopies of the first two pages of the REM covering the properties in Laguna were mixed and attached to the photocopies of the last two pages of the REM covering the Quezon City property.⁵ Thus, in the Notice of Sheriff's Sale, the name "Guellerma Malabanan rep. by her AIF David M. Castro" appeared as mortgagor while the amount of mortgaged indebtedness is ₱96,870.20. The real property described therein however is the Quezon City property.

On 26 August 1996, the Quezon City property was sold at a public auction in favor of Prudential Bank whose winning bid was ₱396,000.00.

In their Complaint, Spouses Castro alleged that the extrajudicial foreclosure and sale of the Quezon City property is null and void for lack of notice and publication of the extrajudicial foreclosure sale. Spouses Castro proffered that the property foreclosed is not one of the properties covered by the REM executed by Guellerma Malabanan which was the basis of the Notice of Sheriff's Sale which was posted and published. Spouses Castro prayed for the declaration of the Sheriff's Certificate of Sale as null and void and for award of damages.⁶

In their Answer, Prudential Bank asserted that Spouses Castro were fully aware that the Quezon City property was to be foreclosed considering that the obligation secured by it remained unpaid as of the date of the

⁴ David Castro died in 3 November 2009. *Rollo*, p. 76.

⁵ Petition for Review on *Certiorari*. *Id.* at 15.

⁶ Complaint. Records, pp. 2-4.

foreclosure sale. Prudential Bank cited a clerical and harmless inadvertence in the preparation of the petition for extrajudicial foreclosure but nonetheless, it claimed that Spouses Castro, having been notified of the scheduled foreclosure of the mortgage of the Quezon City property, should have noticed the inadvertence and alerted the sheriff. Their failure to do so, Prudential Bank added, clearly amounted to laches.⁷

The issue before the RTC was whether Prudential Bank legally complied with the jurisdictional requirement of due notice prior to the extrajudicial sale of the property in question. The trial court ruled in favor of Prudential Bank and dismissed the complaint. It found that:

x x x there was no substantial defect on the published and posted notice of Sheriff's sale. The public had been sufficiently informed of the identity of the property to be sold, identity of the mortgagor-borrower whose unpaid loan is secured by the mortgage and the identity of the mortgagee. The notice did not render plaintiffs themselves uninformed of the nature of the property to be sold.⁸

The trial court further held that the objective of notice was attained since there was sufficient publicity of the sale through newspaper publication and that there was no showing that the property was sold for a price far below its value, an intimation of collusion between the sheriff who conducted the sale and the bank.⁹

On appeal, the Court of Appeals reversed the ruling of the trial court. The appellate court stressed the importance of notice in a foreclosure sale and ruled that failure to advertise a mortgage foreclosure sale in compliance with statutory requirements constitutes a jurisdictional defect invalidating the sale.¹⁰

Prudential Bank filed a motion for reconsideration. In a Resolution dated 14 January 2011, the Court of Appeals, Second Division, expounded on the previous Decision. The appellate court clarified that the erroneous designation of Guellerma Malabanan as mortgagor, instead of David, did not affect the validity of the notice. With respect to the amount of the mortgaged indebtedness however, the appellate court noted that the discrepancy *vis-a-vis* the actual amount owed by Spouses Castro is so huge that it can hardly be considered immaterial. The appellate court opined that declaring a small amount of indebtedness in the petition for extrajudicial

⁷ Answer. Id. at 35-39.

⁸ CA *rollo*, p. 21.

⁹ Records, p. 311.

¹⁰ *Rollo*, p. 37.

foreclosure and in the notice of sheriff's sale would effectively depreciate the value of the property. The appellate court then concluded that statutory provisions governing publication of notice of mortgage foreclosure sales must be strictly complied with and that even slight deviations will invalidate the notice.¹¹

Petitioner Bank of the Philippine Islands (BPI), being the successor-in-interest of Prudential Bank, by virtue of the merger of the two banking institutions with BPI as the surviving entity, filed the instant petition for review defending the ruling of the trial court and reiterating that the published Notice of Sheriff's Sale would show that the subject of the sale, the Quezon City property, was sufficiently and properly described and identified. Petitioner refuted the appellate court's finding that by indicating a lower amount of indebtedness, the notice depreciated the value of the property subject of sale. Petitioner cited *Olizon v. Court of Appeals*,¹² wherein the court declared that immaterial errors and mistakes cannot affect the sufficiency of the notice. Petitioner reiterated Prudential Bank's right to foreclose the mortgage constituted over the Quezon City property because the loan secured by the mortgage had not been paid when it fell due and remained so when the mortgage was scheduled for foreclosure.¹³

In her Comment, Consuelo points out as glaringly erroneous the Notice of Sheriff's Sale which named the mortgagor as "Guellerma Malabanan" and the mortgage indebtedness as ₱96,870.20. Consuelo avers that the properties, the foreclosure of which Prudential Bank appears to seek in its petition, were situated in Laguna, thus, the Sheriff of Quezon City had no jurisdiction to issue a Notice for Sale of said property. Consuelo insists that even if the property was sold for more than the mortgage indebtedness, such would not render the sale valid because public policy is involved in the need for strict compliance with the requirements of notice in extrajudicial foreclosures of mortgage. It was posited that a lesser amount of indebtedness as stated in the notice would mislead a potential bidder in public auction and subject the value of the property to risk of unwarranted diminution. Finally, Consuelo counters that petitioner's reliance on *Olizon* is misplaced because the alleged failure of notice in said case lay in the fact that the notice was published in a newspaper in lieu of being posted. Consuelo argues that in this case the property itself was misidentified in the petition for foreclosure.¹⁴

¹¹ Id. at 42.

¹² G.R. No. 107075, 1 September 1994, 236 SCRA 148.

¹³ Petition for Review on *Certiorari*. *Rollo*, pp. 20-24.

¹⁴ Comment. Id. at 113-115.

The submissions of the parties indicate the basic issue to be whether the errors in the Notice of Sheriff's Sale invalidate the notice and render the sale and the certificate of such sale void.

We find merit in the petition.

At the outset, it bears emphasis that foreclosure proceedings have in their favor the presumption of regularity and the party who seeks to challenge the proceedings has the burden of evidence to rebut the same.¹⁵ In this case, respondent failed to prove that Prudential Bank has not complied with the notice requirement of the law.

Sections 2, 3, and 4 of Act No. 3135 laid down the procedure regarding foreclosure sale:

Sec. 2. Said sale cannot be made legally outside of the province in which the property sold is situated; and in case the place within said province in which the sale is to be made is subject to stipulation, such sale shall be made in said place or in the municipal building of the municipality in which the property or part thereof is situated.

Sec. 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 city.

Sec. 4. The sale shall be made at public auction, between the hours of nine in the morning and four in the afternoon; and shall be under the direction of the sheriff of the province, the justice or auxiliary justice of the peace of the municipality in which such sale has to be made, or a notary public of said municipality, who shall be entitled to collect a fee of five pesos each day of actual work performed, in addition to his expenses.

In *Philippine National Bank v. Maraya, Jr.*,¹⁶ we elucidated that one of the most important requirements of Act No. 3135 is that the notice of the time and place of sale shall be given. If the sheriff acts without notice, or at a time and place other than that designated in the notice, the sheriff acts without warrant of law.¹⁷ In this case, the property sold in the public auction is located in Quezon City and the foreclosure sale proceeded as scheduled at

¹⁵ *Bank of the Philippine Island v. Puzon*, G.R. No. 160046, 27 November 2009, 606 SCRA 51, 62 citing *Consuelo Metal Corporation v. Planters Development Bank*, 578 Phil. 431, 440 (2008).

¹⁶ G.R. No. 164104, 11 September 2009, 599 SCRA 394, 399-400 citing *Campomanes v. Bartolome*, 38 Phil. 808 (1918).

¹⁷ *Tambunting v. Court of Appeals*, G.R. No. L-48278, 8 November 1988, 167 SCRA 16, 23-24.

10:00 o'clock in the morning on 26 August 1996 at the Hall of Justice in Quezon City with Prudential Bank as the winning bidder, registering the highest bid of ₱396,000.00.

In *Century Savings Bank v. Samonte*¹⁸ citing *Olizon v. Court of Appeals*,¹⁹ the Court reiterated the purpose of the rule on notice, to wit:

The object of a notice of sale is to inform the public of the nature and condition of the property to be sold, and of the time, place and terms of the sale. Notices are given for the purpose of securing bidders and to prevent a sacrifice of the property. If these objects are attained, immaterial errors and mistakes will not affect the sufficiency of the notice; but if mistakes or omissions occur in the notices of sale, which are calculated to deter or mislead bidders, to depreciate the value of the property, or to prevent it from bringing a fair price, such mistakes or omissions will be fatal to the validity of the notice, and also to the sale made pursuant thereto.²⁰

The mistakes and omissions referred to in the above-cited ruling which would invalidate notice pertain to those which: 1) are calculated to deter or mislead bidders, 2) to depreciate the value of the property, or 3) to prevent it from bringing a fair price.

In this case, the Notice of Sheriff's Sale²¹ states:

NOTICE OF SHERIFF'S SALE

Upon extra-judicial petition for sale under Act 3135, as amended by Act 4118, filed Prudential Bank, mortgage[e]/s, against Guellerma Malabanan rep. by her AIF David M. Castro mortgagor/s, with residence and postal address at Sta. Rosa, Alaminos, Laguna to satisfy the mortgaged indebtedness, which as of July 1996 amounts to NINETY SIX THOUSAND EIGHT HUNDRED SEVENTY PESOS & 20/100 (P96,870.20) excluding penalties[,] charges, attorney's fees and all the legal fees and expenses for the foreclosure and sale, the Ex-Officio Sheriff of Quezon City or her duly authorized Deputy, will sell at PUBLIC AUCTION to the highest bidder FOR CASH and in Philippine Currency, on the 26th day of AUGUST, 1996, at 10:00 o'clock in the morning, or soon thereafter, in front of the main entrance of the Hall of Justice (beside the Quezon City Hall) Elliptical Road, Diliman, Quezon City, the

¹⁸ G.R. No. 176212, 20 October 2010, 634 SCRA 261, 276.

¹⁹ Supra note 12.

²⁰ Id. at 156.

²¹ Folder of Exhibits, p. 35.

following described real estate property, together with all the improvements existing thereon to wit:

**TRANSFER CERTIFICATE OF TITLE
NO. 364277
Registry of Deeds Quezon City**

A parcel of land (Lot 5-B of the subd. Plan (LRC) Psd-339863, approved as a nonsubdn. project, being a portion of Lot 5, Blk. 1, (LRC) Psd-45612, LRC Rec. No. 5975), situated in the Dist. of Tandang Sora, Quezon City. Bounded on the NE., points 4 to 1 by Road Lot 1 (LRC) Psd-45612; on the SE., points 1 to 2 by Lot 5-C; on the SW., points 2-3 by Lot 5-A, both of the subdn. plan; and on the NW., points 3-4 by Lot 371- New Psd- 36060. x x x x containing an area of ONE HUDNRED (100) SQUARE METERS, more or less.

Prospective bidders or buyers are hereby enjoined to investigate for themselves the title of the said real estate property and the encumbrances thereon, if any there be.

With jurisprudence as the measure, the errors pointed out by respondents appear to be harmless. The evils that can result from an erroneous notice did not arise. There was no intention to mislead, as the errors in fact did not mislead the bidders as shown by the fact that the winning registered bid of ₱396,000.00 is over and above the real amount of indebtedness of ₱209,205.05. As correctly observed by the trial court, the amount mentioned in the notice did not indicate a collusion between the sheriff who conducted the sale and the respondent bank. Notably, the mentioned amount of ₱96,870.20 refers to the mortgage indebtedness not the value of the property. Equally notable is the announcement in the notice that the amount excludes “penalties, charges, attorney’s fees and all legal fees and expenses for the foreclosure and sale.”

As regards the designation of Guellerma Malabanan as the mortgagor, we agree with the reference made by the Court of Appeals to the case of *Langkaan Realty Dev’t Inc. v. UCPB* which ruled that the erroneous designation of an entity as the mortgagor does not invalidate the notice of sale.²²

The notice rule was complied with when the Notice of Sheriff’s Sale was published in Philippine Recorder, a national newspaper of general circulation once a week for three consecutive weeks or on 29 July, 5 and 12 August 1996. As a matter of fact, the foreclosure procedure undertaken by

²² 400 Phil. 1349, 1360 (2000) citing *Olizon v. Court of Appeals*, supra note 12 at 154-155.

Prudential Bank was supported by the following documents: Affidavit of Publication,²³ Notice of Sheriff's Sale,²⁴ Sheriff's Certificate of Sale,²⁵ Affidavit of Posting,²⁶ and Minutes of the Auction Sale.²⁷ Indubitably, these documents evidenced the regular and lawful conduct of the foreclosure proceedings.

There is much significance in the fact that David admitted on the witness stand that he knew that there was an application for foreclosure on their Quezon City property but the REM used as basis of the foreclosure covered the Laguna properties. Upon learning this information, he should have registered his objection or sought clarification from the sheriff's office. Instead, he let the public auction run its course and belatedly objected to the sale.

For failure to overcome the burden of showing that the foreclosure proceedings is tainted with irregularity, the Certificate of Sale should be upheld.

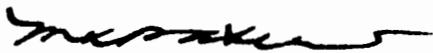
WHEREFORE, the petition is **GRANTED**. The 26 November 2009 Decision and 14 January 2011 Resolution of the Court of Appeals in CA-G.R. CV No. 88870 is **REVERSED and SET ASIDE**. The 24 January 2007 Decision of the Regional Trial Court of Quezon City, Branch 97 in Civil Case No. Q-97-32018 is **REINSTATED**.

SO ORDERED.

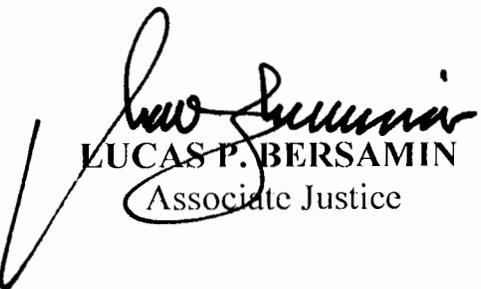

JOSE PORTUGAL PEREZ
Associate Justice

²³ Folder of Exhibits, p. 23.
²⁴ Id. at 24.
²⁵ Id. at 26.
²⁶ Id. at 31.
²⁷ Id. at 32.

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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