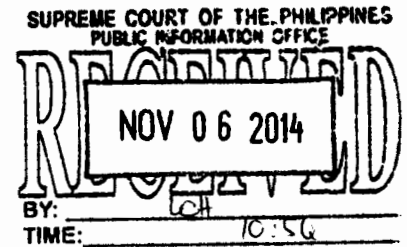




Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION



NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **October 22, 2014**, which reads as follows:

“G.R. No. 206048 (Unilink Bank, Inc. [formerly Universal Savings and Loan Association, Inc.] vs. Teresita Agpalza and Josephine Gasgonia-Coronel). – Before this Court is a petition for review¹ from the Decision² dated October 19, 2012 of the Court of Appeals (CA) in CA-G.R. CV No. 94932 which affirmed with modification the Decision³ dated October 19, 2009 of the Regional Trial Court (RTC) of Biñan, Laguna, Branch 24 in Civil Case No. B-6007, for *Annulment of Certificate of Sale and Transfer Certificates of Title Nos. T-479395 & T-487902, and Redemption with Damages.*

Antecedent Facts

On July 12, 1999, spouses Vicente (Vicente) and Fortunata (Fortunata) Gasgonia (spouses Gasgonia) executed a deed of real estate mortgage over a parcel of residential land to secure a loan of ₱700,000.00 from herein petitioner, Universal Savings and Loan Association, Inc., now Unilink Bank, Inc. (Unilink). Said land is situated in *Barangay Dila*, Santa Rosa, Laguna registered in Vicente’s name under Transfer Certificate of Title (TCT) No. T-394993. The loan was payable in three (3) years with interest at 22% *per annum*, and a penalty of 36% per year in case of default. The spouses Gasgonia reneged on their loan which had already reached ₱1,011,590.75 as of April 28, 2000.

Unilink foreclosed on the mortgage, and the auction sale of the mortgaged lot was set on March 29, 2000 at 10:00 a.m. at the Municipal Building of Santa Rosa, Laguna. But on the said date, the sale was reset to April 28, 2000 at 10:00 a.m. without republication thereof in a newspaper of general circulation in Laguna. The sale was finally held as rescheduled, and

¹ *Rollo*, pp. 10-31.

² Penned by Associate Justice Agnes Reyes-Carpio with Associate Justices Rosalinda Asuncion-Vicente and Priscilla J. Baltazar-Padilla, concurring; *id.* at 32-41.

³ Issued by Presiding Judge Marino E. Rubia, *id.* at 73-76.

on May 15, 2000 a Certificate of Sale was accordingly issued to Unilink.⁴ The sale was inscribed on TCT No. 394993 on July 3, 2000.⁵

Vicente died on June 3, 2000.⁶ On July 6, 2000, the heirs of Vicente filed an affidavit of adverse claim, which was annotated on TCT No. 394993 on July 10, 2000.⁷ On July 13, 2001, TCT No. T-479395 was issued to Unilink to replace TCT No. 394993.⁸ On March 27, 2001, Teresita Agpalza and Josephine Gasgonia-Coronel (respondents) filed a notice of *lis pendens* to annotate their complaint against their stepmother, Fortunata, docketed as Civil Case No. B-5721 before Branch 24 of RTC of Biñan, Laguna. Meanwhile, Ernesto Gatpandan, Jr. and Beverly Gatpandan (spouses Gatpandan) bought the lot from Unilink. On October 19, 2001, TCT No. T-487902 was issued in their name to replace TCT No. T-479395.

Claiming that they were legitimate children of Vicente by his first wife, the respondents filed Civil Case No. B-6007 before the RTC on December 20, 2001 against Unilink and the spouses Gatpandan to annul the foreclosure sale of the subject property. They alleged that they were denied an opportunity to exercise their right of redemption through the fault of Unilink and the spouses Gatpandan, and prayed for actual damages of ₱100,000.00, moral damages of ₱150,000.00, and attorney's fees of ₱100,000.00.⁹

In its Answer,¹⁰ Unilink insisted that the spouses Gasgonia were duly notified of the auction sale held on April 28, 2000; that the notice of sale was posted in three conspicuous places in Santa Rosa, Laguna before the scheduled auction sale, as shown in the affidavit of posting executed by Benigno Villarez, an employee of Unilink; that personal notice to the mortgagor in extrajudicial foreclosure proceedings is not necessary since Section 3 of Act No. 3135 requires only the posting of the notice of auction sale and publication in a newspaper of general circulation; that there was no republication of the rescheduled auction sale because it is not required by law; and that the interests, penalties and attorney's fees charged by Unilink were not unlawful as the Central Bank has suspended the Usury Law. Unilink sought ₱500,000.00 as actual damages, ₱500,000.00 as exemplary, moral and compensatory damages, ₱200,000.00 as attorney's fees and ₱200,000.00 as litigation expenses.

For their part, the spouses Gatpandan averred that they were buyers in good faith and for value. They prayed for ₱500,000.00 as moral damages, ₱200,000.00 as exemplary damages and ₱100,000.00 as attorney's fees.

⁴ Id. at 33-34.

⁵ Id. at 48.

⁶ Id. at 33.

⁷ Id. at 34.

⁸ Id. at 52.

⁹ Id. at 58-62.

¹⁰ Id. at 63-67.

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On October 19, 2009, the RTC rendered its decision, the *fallo* of which reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Declaring the extrajudicial foreclosure proceedings held on April 28, 2000 and the Certificate of Sale dated May 15, 2000 illegal and invalid;
2. Declaring the Transfer Certificates of Title Nos. T-479395 and T-487902 null and void and reinstatement of TCT No. T-394993 in the name of Vicente Gasgonia; and
3. Ordering defendant Universal Loan and Association, Inc. and defendants Gatpandan jointly and severally liable to plaintiffs for actual damages in the amount of Php 100,000.00, Php 50,000.00 as moral damages and Php 100,000.00 as reasonable attorney's fees.

SO ORDERED.¹¹

On appeal to the CA, Unilink and the spouses Gatpandan interposed the following errors, to wit:

I

THE TRIAL COURT SERIOUSLY ERRED IN DECLARING THE EXTRAJUDICIAL [FORECLOSURE] PROCEEDINGS AS ILLEGAL AND INVALID.

II

THE TRIAL COURT GRAVELY ERRED IN DECLARING TCT NOS. T-479395 AND T-487902 NULL AND VOID AND ORDERING THE REINSTATEMENT OF TCT NO. T-394993 IN THE NAME OF VICENTE GASGONIA.

III

THE TRIAL COURT SERIOUSLY ERRED IN NOT HOLDING THAT THE APPELLANTS SPOUSES GATPANDAN ARE BUYERS IN GOOD FAITH.

IV

THE TRIAL COURT COMMITTED SERIOUS ERROR IN FACT AND IN LAW IN AWARDING DAMAGES TO THE APPELLEES.

¹¹ Id. at 76.

V

THE TRIAL COURT ERRED IN NOT HOLDING THAT THE FILING OF THIS CASE IS PREMATURE AS THERE SHOULD FIRST BE DETERMINATION OF WHO ARE THE HEIRS OF VICENTE GASGONIA AND WHETHER OR NOT THE PROPERTY IN QUESTION SHOULD BE INCLUDED IN HIS ESTATE.¹²

Ruling of the CA

The CA affirmed the trial court's judgment but deleted the award of actual and moral damages against the spouses Gatpandan. It found that the proof of publication of the auction sale consisted only of an affidavit of publication executed by an employee of Unilink stating that the notice of the sale was published in *The Southern Tagalog Journal* on February 4, 11 and 18, 2000; that the said published notice announced only the sale scheduled on March 29, 2000 at 1:00 p.m.; and that there was no republication of the new auction sale scheduled for April 28, 2000. Unilink's witness, Ramon Manuel S. Melencio, confirmed that the new auction sale was not republished, viz:

"ATTY. PAMPOLINA, JR.

Q: Okay, was this April 28, 2000 resetting of the auction sale ever published [in] a newspaper of general circulation?

WITNESS

A: What he advise[d] for the second notice of auction sale under this there was no publication.

Q: And there was no publication with respect to the April 28, 2000 second notice of auction sale?

A: Because that was the advise of our counsel, sir."¹³

The CA relied on Section 3 of Act No. 3135, governing the extrajudicial foreclosure sale of mortgaged real property, as amended by Act No. 4118, which provides:

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 of city.** (Emphasis supplied)

The CA cited *Development Bank of the Philippines v. Aguirre*¹⁴ which held that the foreclosure sale held more than two months after the published date of the sale is void due to lack of republication. The CA also cited *Development Bank of the Philippines v. Court of Appeals*,¹⁵ where against the argument that the law nowhere requires the republication of the notice of

¹² Id. at 36-37.

¹³ Id. at 38.

¹⁴ 417 Phil. 235 (2001).

¹⁵ 451 Phil. 563 (2003).

a rescheduled auction sale, the Court categorically ruled that the lack of publication of the rescheduled sale of real property renders the extrajudicial foreclosure void.

As for the prematurity of the complaint due to lack of a prior determination in an intestate proceeding of the rightful heirs of Vicente, the CA dismissed the issue after noting that it was raised only for the first time on appeal.

Concerning the award of actual damages, the CA noted that the respondents failed to adduce competent proof of the amount of loss they suffered other than self-serving statements. But the award of moral damages against Unilink was affirmed because the respondents were compelled to litigate to protect their interest. As to the spouses Gatpandan, however, their liability to pay moral damages was deleted because they had no hand in the extrajudicial foreclosure of the subject property.

Petition for Review to the Supreme Court

In this petition for review, Unilink reiterates its assigned errors before the CA, and pleads substantial compliance with the publication requirement since there had been a valid prior publication and posting of the notice of the first date of the auction sale. It also points out that the mortgagors had personal notice of the rescheduled auction sale because they were duly served with the second notice of sale on March 30, 2000 informing them of the new auction sale on April 28, 2000.¹⁶

The Court is not persuaded.

The Court in *Ouano v. Court of Appeals*¹⁷ has held:

It is a well-settled rule that statutory provisions governing publication of notice of mortgage foreclosure sales must be strictly complied with, and that even slight deviations therefrom will invalidate the notice and render the sale at least voidable. In a number of cases, we have consistently held that failure to advertise a mortgage foreclosure sale in compliance with statutory requirements constitutes a jurisdictional defect invalidating the sale. Consequently, such defect renders the sale absolutely void and no title passes.¹⁸ (Citations omitted)

It is, thus, settled that failure to advertise a mortgage foreclosure sale in compliance with statutory requirements constitutes a **jurisdictional** defect invalidating the sale;¹⁹ that such a defect renders the sale absolutely void and

¹⁶ *Rollo*, pp. 88-89.

¹⁷ 446 Phil. 690 (2003).

¹⁸ *Id.* at 703.

¹⁹ *PNB v. Nepomuceno Productions, Inc.*, 442 Phil. 655, 664 (2002).

no title passes.²⁰ Indeed in *PNB v. Nepomuceno Productions, Inc.*,²¹ the Court specifically explains that the publication of the notice of auction sale is not for the benefit of the mortgagor but for the purpose of informing the public thereof, with the hope of obtaining the best price for the foreclosed property:

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. Clearly, the statutory requirements of posting and publication are mandated, not for the mortgagor's benefit, but for the public or third persons. x x x.²² (Citation omitted)

In *Tambunting v. Court of Appeals*,²³ it was held that republication in the manner prescribed by Act No. 3135 is necessary for the validity of a postponed extrajudicial foreclosure sale, thus:

Where required by the statute or by the terms of the foreclosure decree, public notice of the place and time of the mortgage foreclosure sale must be given, a statute requiring it being held applicable to subsequent sales as well as to the first advertised sale of the property.²⁴

Also, if in fact Unilink manipulated the auction sale to ensure that it won and to prevent the respondents from redeeming the mortgaged property, Unilink may be said to have violated Article 2088 of the Civil Code which forbids the creditor from, in effect, appropriating the thing given by way of pledge or mortgage, or disposing of them. As held in *Metropolitan Bank v. Wong*.²⁵

It is bad enough that the mortgagor has no choice but to yield his property in a foreclosure proceeding. It is infinitely worse, if prior thereto, he was denied of his basic right to be informed of the impending loss of his property. This is another instance when law and morals echo the same sentiment.²⁶

Coming now to the question of prematurity of the complaint since allegedly there has yet been no determination of the rightful heirs of Vicente, Section 2, Rule 3 of the Rules of Court provides that interest in the action is what determines a litigant's standing therein:

²⁰ *Borja v. Addison*, 44 Phil. 895, 904 (1922), citing *Campomanes v. Bartolome and Germann & Co.*, 38 Phil. 808, 815 (1918).

²¹ 442 Phil. 655 (2002).

²² Id. at 663-664.

²³ 249 Phil. 16 (1988).

²⁴ Id. at 23.

²⁵ 412 Phil. 207 (2001).

²⁶ Id. at 212.

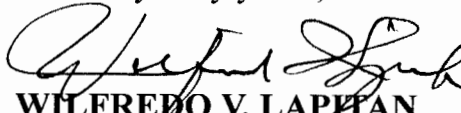
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Sec. 2. *Parties in interest.* – A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

Interest means material interest or an interest in issue to be affected by the decree or judgment of the case, as distinguished from mere curiosity about the question involved.²⁷ When the plaintiff is not the real party in interest, the case is dismissible on the ground of lack of cause of action.²⁸ Unilink argues that no intestate proceeding was brought to determine the heirs of Vicente and whether the subject property is part of his estate. But from the allegations of the Complaint,²⁹ it is clear that the respondents claim that they are presumptive heirs and co-owners of the intestate estate of Vicente. As such, they have a duty and a right to bring the action below which seeks to restore the subject lot back to the estate of Vicente. All told, the Court finds no reversible error with the decision of the CA.

WHEREFORE, premises considered, the petition is **DENIED.**”
(*Velasco, Jr., J., on leave; Peralta and Perlas-Bernabe, JJ., designated Acting Chairperson and Acting Member per Special Order Nos. 1815 and 1816, respectively, both dated October 3, 2014.*)

Very truly yours,


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Division Clerk of Court

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²⁷ *Abella, Jr. v. Civil Service Commission*, 485 Phil. 182, 199 (2004).

²⁸ *Pascual v. Court of Appeals*, 360 Phil. 403 (1998).

²⁹ *Rollo*, pp. 58-62.