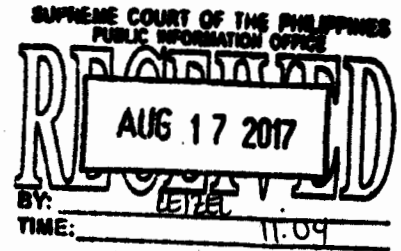




Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **June 5, 2017**, which reads as follows:

“G.R. No. 200385 (Thelma Congson, Roselily Congson Estomo, Alan Congson, Dennis Congson, Loraine Congson and Elaine Congson vs. Far East Bank and Trust Company (now Bank of the Philippine Islands), Register of Deeds of General Santos City, Provincial Sheriff of General Santos City). – In the instant Petition for Review on *Certiorari*,¹ Thelma Congson (Thelma), Roselily Congson Estomo (Roselily), Alan Congson, Dennis Congson, Loraine Congson and Elaine Congson (collectively, the petitioners), seek to reverse the Decision² and Resolution,³ dated September 30, 2011 and January 18, 2012, respectively, of the Court of Appeals (CA) in CA-G.R. CV No. 00218. The CA affirmed *in toto* the Decision⁴ dated March 25, 2003 of the Regional Trial Court (RTC) of General Santos City, Branch 23, in Civil Case No. 5639 dismissing the petitioners’ complaint for annulment of foreclosure, repurchase, damages and attorney’s fees filed against Far East Bank and Trust Company (FEBTC) (now Bank of the Philippine Islands [BPI]), and the Register of Deeds (RD) and Provincial Sheriff of General Santos City (collectively, the respondents).

Antecedents

The petitioners obtained from FEBTC a Discounting Line (DL) in the amount of ₱5,000,000.00, covered by five promissory notes (PNs), and due for payment on May 31, 1991. FEBTC also extended to the petitioners a Term Loan (TL) in the amount of ₱10,000,000.00, covered by 14 PNs, and due to be paid on July 13, 1993. All the PNs contained an acceleration clause in the event of default, imposition of 25% of the amount as attorney’s fees in case collection is referred to a lawyer, and waiver of presentment, demand, protest or notice of non-payment or dishonor. Both the DL and TL were secured by six real estate mortgages (REMs), which were separately

¹ Rollo, pp. 10-37.

² Penned by Associate Justice Edgardo T. Lloren, with Associate Justices Romulo V. Borja and Carmelita Salandanan-Manahan concurring; *id.* at 39-55.

³ *Id.* at 57-58.

⁴ Rendered by Acting Presiding Judge Marivic Trabajo Daray; *id.* at 65-76.

executed in 1987, 1988, 1989 and 1990, and constituted over 12 properties. Per REMs, the amounts of the loan obtained by the petitioners from FEBTC totalled ₱10,266,000.00. Additionally, the petitioners likewise executed a Chattel Mortgage over several personal properties.⁵

In all of the REMs executed by the petitioners, it was provided that the realty subject thereof shall “*secure the payment*” of the credit accommodations obtained from FEBTC and “*those that may [t]hereafter be obtained,*” including the principal, interests and expenses.⁶

Upon the DL’s maturity on May 31, 1991, the petitioners failed to pay. Consequently, the TL became due as well. As of July 31, 1991, the petitioners’ obligation on the DL amounted to ₱6,355,361.13, while that owing from the TL totalled ₱13,126,221.17.⁷

FEBTC referred the account to its Remedial Loan Management Group to afford the petitioners chances to amicably settle their obligations. The petitioners thereafter repeatedly committed but failed to tender their payments.⁸

Meanwhile, the petitioners sold one of the mortgaged properties, covered by Transfer Certificate of Title (TCT) No. 32152, to Insular Life Assurance Company (Insular) for ₱7,310,000.00, which amount was applied by FEBTC to the interest payments due on the loans. The mortgage constituted over the lot sold was thus cancelled.⁹

FEBTC deferred the institution of foreclosure proceedings. As of August 31, 1993, the total obligation amounted to ₱21,925,688.61. Due to the continued failure of the petitioners to submit proposals for settlement, FEBTC finally filed before the RTC on October 27, 1993 a petition for extrajudicial foreclosure of all mortgages except with respect to the lot sold to Insular. On November 25, 1993, the Clerk of Court of the RTC issued a notice of extrajudicial foreclosure addressed to the petitioners and the public, setting the date of the public auction on January 4, 1994. The notice was posted in three public places in General Santos City and published for three consecutive weeks in the *Sarangani Journal*.¹⁰

In the foreclosure sale, only the mortgaged real properties and not the chattels were sold. FEBTC was the lone bidder.¹¹ The breakdown of FEBTC’s total bid amount follows:¹²

⁵ Id. at 40-42.

⁶ Id. at 42.

⁷ Id.

⁸ Please see BPI’s Comment, id. at 153-181, at 161-164.

⁹ Id. at 164-165.

¹⁰ Id. at 43, 165-167.

¹¹ Id. at 167.

¹² Id. at 43.

Principal, Interest, Penalty (PIP) (as of January 4, 1994)	₱22,447,871.19
Other Charges	29,466.26
Legal Fees (Filing Fees, etc.)	109,625.00
Publication Fee	18,402.30
Attorney's Fees (25% of PIP)	5,611,967.80
TOTAL	28,217,332.55

The Sheriff's Certificate of Extrajudicial Sale was issued in FEBTC's favor on January 5, 1994, and recorded with the RD of General Santos City on January 11, 1994. Since the bid price already covered all the amounts due, FEBTC withdrew its petition to foreclose the Chattel Mortgage.¹³

When the period of redemption lapsed on January 11, 1995, the petitioners sought an extension of six months, which the FEBTC granted. The petitioners once again failed to redeem the foreclosed properties within the given period.¹⁴

On September 25, 1995, Roselily offered to redeem the foreclosed properties, with a commitment to tender the amount of ₱30,000,000.00 within 30 days from FEBTC's notice. The said amount was not paid.¹⁵

On October 4, 1995, the petitioners filed before the RTC a complaint for annulment of foreclosure, with an alternative prayer for the repurchase of the foreclosed properties, origin of the instant petition. FEBTC filed its Answer with Counterclaims. The petitioners thereafter moved for the rendition of summary judgment, which the RTC denied.¹⁶

On October 9, 1995, or one year and nine months after the Sheriff's issuance of the Certificate of Sale, FEBTC consolidated its ownership over the foreclosed lots.¹⁷

In a public auction held on October 10, 1995, FEBTC sold seven of the foreclosed lots.¹⁸

Ruling of the RTC and CA

On March 25, 2003, the RTC rendered a Decision,¹⁹ the *fallo* of which reads:

¹³ Id. at 167.
¹⁴ Id. at 168.
¹⁵ Id. at 44, 168.
¹⁶ Id. at 44.
¹⁷ Id.
¹⁸ Id. at 168.
¹⁹ Id. at 65-76.

WHEREFORE, premises considered, finding no merit in the instant complaint filed by the plaintiffs spouses Cleto and [Thelma], this Court hereby orders the DISMISSAL of this case. The plaintiffs are hereby ordered to pay [FEBTC] the amount of P500,000.00 by way of attorney's fees and P172,838.50 as litigation expenses.

Costs against [the petitioners].

SO ORDERED.²⁰

The RTC did not sustain the petitioners' argument anent the invalidity of the foreclosure sale allegedly on account of FEBTC's lumping up all the debts into one, hence, rendering it more difficult to redeem the mortgaged lots. The RTC noted that in each of the mortgaged contracts executed between the parties, there was a provision to the effect that the subject property shall secure the payment of the credit accommodation mentioned therein and all others that may thereafter be obtained. Further, each mortgage contract also referred to "*the parcels of land described in the list appended*" thereto. The RTC, thus, concluded that all the loans obtained were part of a single credit line granted to the petitioners. Further, the requirements of Act No. 3135²¹ have been substantially complied with. The RTC also declared that the application first upon the interests and not on the principal amounts of the payments made by the petitioners was in accordance with the provisions on credit found in the New Civil Code (NCC). The RTC likewise stressed that the petitioners' right to redemption had expired. With respect to two of the foreclosed lots covered by homestead patents, the RTC ruled that the petitioners cannot rely on Commonwealth Act No. 141²² (C.A. No. 141) since the five-year period of redemption provided for therein ceases to apply in the instant case, the subject lands having been already certified as industrial. The RTC, hence, found that since FEBTC was compelled to incur expenses in protecting its interest, attorney's fees and litigation costs should be awarded.²³

The petitioners filed an appeal, which the CA denied in the herein assailed decision²⁴ and resolution.²⁵ The CA cited Article 1253 of the NCC, which explicitly provides that "*payment of the principal shall not be deemed to have been made until the interests have been covered.*"²⁶ Further, FEBTC, as an unpaid mortgagor, has the right to institute foreclosure proceedings. Both the DL and TL were due and demandable, and all the mortgaged properties served as collaterals for them. Besides, there is no law prohibiting the sale of several properties in a single public auction sale.²⁷

²⁰ Id. at 75-76.

²¹ AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES. Approved on March 6, 1924.

²² AN ACT TO AMEND AND COMPILER THE LAWS RELATIVE TO LANDS OF THE PUBLIC DOMAIN. Approved on November 7, 1936.

²³ *Rollo*, pp. 73-75.

²⁴ Id. at 39-55.

²⁵ Id. at 57-58.

²⁶ Id. at 46-47.

²⁷ Id. at 49.

Further, the CA noted that Roselily offered to redeem all the foreclosed lots for ₱30,000,000.00 one year and eight months after the sale, which, however, did not materialize. She did not offer to repurchase any specific property, only to claim in the end that FEBTC should have allowed the petitioners to redeem the lots on a piecemeal basis.²⁸ Moreover, FEBTC leniently negotiated with the petitioners for the payment of their obligations, and later, for the redemption of the foreclosed lots. The amount of FEBTC's bid also demonstrated good faith considering that even when the mortgaged lots had a total loan value of only ₱10,266,000.00, FEBTC offered more than twice the amount, effectively releasing the petitioners from paying deficiencies.²⁹ The CA, likewise, did not uphold the petitioners' allegation of entitlement to redemption pursuant to the provisions of C.A. No. 141, since it was not disputed that the latter no longer resided in the homestead lots.³⁰

Issues

Unperturbed, the petitioners are before the Court raising the issues of whether or not the CA erred in (1) upholding the validity of the foreclosure sale despite FEBTC's lumping of all the loans into a single debt, and instituting only a single petition for foreclosure, (2) ruling that the petitioners' right to redemption had expired, and (3) awarding attorney's fees.³¹

The petitioners insist that each mortgage contract should be treated distinctly, requiring a separate notice, publication, notice and certificate of sale. They also argue that the sale of all the mortgaged lots in a single auction sale effectively increased their indebtedness, prevented competitive bidding, and defeated their right to redemption.³² The petitioners also ascribed error upon the CA in concluding that they had abandoned the homestead lots, hence, were precluded from the application of C.A. No. 141. The petitioners allege that the CA speculated on their profit motive based merely on their manifestation anent the conduct of final negotiations for the sale of the said lots.³³

BPI, as FEBTC's successor-in-interest, filed a Comment³⁴ claiming that a blanket mortgage clause was inserted in all of the agreements. Each mortgage served as a security not only for the principal loan indicated therein, but for all others, which may be extended to the petitioners, including accrued interests and expenses. A mortgage used as a security for future loans is valid, and the amount indicated as consideration does not limit the sum for which the mortgage may stand as security if from the

²⁸ Id. at 49-50.
²⁹ Id. at 50.
³⁰ Id. at 50-54.
³¹ Id. at 23.
³² Id. at 26-28.
³³ Id. at 34.
³⁴ Id. at 153-181.

instrument itself, the intent to secure future and other loans can be gathered.³⁵ BPI also posits that the petitioners' indebtedness and redemption price were not in any way affected whether the foreclosure be done individually or collectively. Besides, all the mortgages served as collaterals for the DL, TL and all the subsequent obligations of the petitioners,³⁶ and even if they were for argument's sake to be treated separately, there was nothing illegal anent FEBTC's act of simultaneously foreclosing the mortgages.³⁷ The posting and publication requirements under Act No. 3135 were complied with, and the foreclosed lots were sold for a fair price.³⁸ The BPI cited *Valmonte v. CA*,³⁹ where the Court upheld the validity of an extrajudicial foreclosure sale considering the mortgagors' admission that they sought for an extension of time to redeem the properties. Estoppel thus operated against the mortgagors, who were thereafter precluded from assailing the foreclosure's validity.⁴⁰ On the petitioners' averment that they were entitled to a five-year redemption period pursuant to C.A. No. 141, BPI asserts that as the two homestead lots were reclassified as industrial, the invoked statute no longer applies. This is especially since the petitioners were already engaged in fishing and ice plant businesses, and the redemption being sought was not motivated by an intent to preserve the lots within the family fold, but to dispose of the same for profit.⁴¹ Lastly, the petitioners filed their complaint when they failed to come up with the amount of ₱30,000,000.00, which they offered to FEBTC as redemption price. The petitioners abused their right to litigate, and should be liable for the payment of attorney's fees.⁴²

Ruling of the Court

The instant petition lacks merit, but the Court deems it proper to delete the amount of attorney's fees and litigation expenses awarded by the RTC and CA.

The RTC and CA uniformly ruled that FEBTC had breached no law in foreclosing the mortgaged lots, selling the same in a public auction, and thereafter denying the petitioners' right to redemption. The Court finds no compelling reasons to disturb the foregoing.

In *Perez v. CA*,⁴³ the Court instructed that:

³⁵ Id. at 170.
³⁶ Id. at 172.
³⁷ Id. at 173.
³⁸ Id. at 174-175.
³⁹ 362 Phil. 616 (1999).
⁴⁰ *Rollo*, p. 177.
⁴¹ Id. at 177-178.
⁴² Id. at 179-180.
⁴³ 502 Phil. 346 (2005).

In the absence of evidence proving that a judgment debtor was merely trying to protect himself or save his property, and that no reliance could or should have been placed upon his action in so doing, an attempt to redeem from an execution sale has been construed as a waiver of defects or irregularities therein, precluding him from relying upon them for the purpose of challenging its validity. When Aclon sought to redeem his property from PNB[,] he never made any reservation with respect to his right to question the validity of the auction sale and to seek alternative relief before the courts. In other words, there was no indication whatsoever that he does not recognize the validity of the sale. If petitioner indeed felt that the assailed foreclosure proceedings were attended with any irregularity[,] he should have filed the appropriate action with the court. Instead, he offered to repurchase the subject properties without any condition or reservation. Nevertheless, Aclon failed to comply with his undertaking and instead defaulted in his subsequent payments.

Redemption is inconsistent with the claim of invalidity of the sale. Redemption is an implied admission of the regularity of the sale and would estop the respondents from later impugning its validity on that ground. Thus, the private respondents' pleas for extensions of time to redeem the subject property are of the same genre.⁴⁴ (Citation omitted)

In the case at bar, after the expiration of the redemption period, the petitioners requested for an extension of six months to repurchase the lots. Two months after the lapse of the extension period, they offered to pay ₱30,000,000.00 within 30 days to collectively redeem the foreclosed properties. No payment came. Instead, they filed the complaint for the foreclosure's annulment. The Court explicitly explained in *Perez* that redemption is an implied admission of the regularity of the foreclosure sale, and effectively estops the petitioners from assailing its validity. Inevitably, the Court concludes that the petitioners' complaint filed with the RTC was their last-ditch effort to save an already lost cause.⁴⁵

Further, the RTC and CA found that the requirements of Act No. 3135 on posting and publication of the notice of auction sale were complied with. The Court thus perceives no need to belabor the issue.

Be that as it may, the deletion of the attorney's fees and litigation expenses awarded by the RTC and CA is in order. In favoring FEBTC's claim for attorney's fees, the RTC merely declared, without any other explanation, that *the bank was compelled to incur expenses in order to protect its interest.*⁴⁶ The CA, on the other hand, stated that since the

⁴⁴ Id. at 367, citing *Aclon v. CA*, 436 Phil. 219, 231 (2002).

⁴⁵ *Perez v. CA*, id.

⁴⁶ *Rollo*, p. 75.

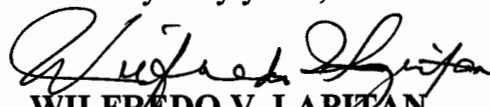
petitioners sought the annulment of the foreclosure, and redemption of the lots for speculative reasons, FEBTC is entitled to attorney's fees.⁴⁷

In *PNCC v. APAC Marketing Corporation*,⁴⁸ the Court elucidated that in awarding attorney's fees, "*it is imperative that they clearly and distinctly set forth in their decisions the basis for the award thereof.*"⁴⁹ The Court finds the RTC and CA's award of both attorney's fees and litigation costs bereft of elaboration. The Court notes too that in the foreclosure sale, the amount of FEBTC's bid included ₱5,611,967.80 as attorney's fees. The said amount is already sufficient to cover the legal expenses incurred by FEBTC before and after the foreclosure sale.

WHEREFORE, the Court **ADOPTS** and **AFFIRMS** *in toto* the factual findings and conclusions of law in the Decision and Resolution, dated September 30, 2011 and January 18, 2012, respectively, of the Court of Appeals in CA-G.R. CV No. 00218, subject to the **MODIFICATION** that the award of ₱500,000.00 as attorney's fees and ₱172,838.50 as litigation expenses is **DELETED.**" (Jardeleza, J., no part, as a family member is connected with a party; **Perlas-Bernabe, J.**, designated additional Member per Raffle dated April 26, 2017.)

SO ORDERED."

Very truly yours,


WILFREDO V. LAPITAN
Division Clerk of Court 7/12/17

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⁴⁷ Id. at 55.

⁴⁸ 710 Phil. 389 (2013).

⁴⁹ Id. at 396.