



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

THE COMMONER LENDING CORPORATION, represented by MA. NORY ALCALA,
 Petitioner,

G.R. No. 235260

Present:

PERALTA, *CJ.*, Chairperson,
 CAGUIOA,
 REYES, J., JR.,
 LAZARO-JAVIER, and
 LOPEZ, *JJ.*

-versus-

SPOUSES VOLTAIRE AND ELLA VILLANUEVA,
 Respondents.

Promulgated:

AUG 27 2020

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R E S O L U T I O N

LOPEZ, J.:

The interpretation of the real estate mortgage contract is the main issue in this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Court of Appeals' (CA) Decision¹ dated March 27, 2017 in CA-G.R. CEB-CV No. 04387, which declared void the extrajudicial foreclosure sale.

ANTECEDENTS

On August 13, 2002, Spouses Voltaire and Ella Villanueva borrowed ₱100,000.00 from The Commoner Lending Corporation (TCLC) payable within one year and with 24% interest *per annum*.² As security, Spouses Villanueva executed a real estate mortgage over Lot No. 380-D.³ Thereafter, Spouses Villanueva paid TCLC a total of ₱82,680.00 but were unable to settle the balance of ₱41,340.00. Thus, TCLC sent a final demand

¹ *Rollo*, p. 14-26; penned by Associate Justice Gabriel T. Robeniol, with the concurrence of Associate Justices Pamela Ann Abella Maxino and Pablito A. Perez.

² *Id.* at 121, 137.

³ *Id.* at 138-139, 156-157. Lot No. 380-D is a 107-square meter land situated at Manoc-Manoc, Malay, Aklan, and covered by Tax Declaration No. 2313 in the name of Voltaire Villanueva.

letter. Yet, Spouses Villanueva failed to comply.⁴

Accordingly, TCLC applied with the Office of the Provincial Sheriff to foreclose the real estate mortgage.⁵ After notice and publication, an auction sale⁶ on December 7, 2004 was held and the mortgaged property was sold to TCLC as the sole bidder. On December 14, 2004, TCLC was issued a certificate of sale⁷ which it recorded with the register of deeds.⁸ On January 31, 2006, a final deed of sale was executed in favor of TCLC.⁹

Aggrieved, Spouses Villanueva filed an action against TCLC to annul the extrajudicial foreclosure sale, certificate of sale and final deed of sale before the Regional Trial Court (RTC) docketed as Civil Case No. 7823.¹⁰ Spouses Villanueva alleged that TCLC had no right to foreclose the mortgaged property because paragraph 3 of the real estate mortgage did not expressly grant it the power to sell. Moreover, the mortgage transaction between the parties is void because it gave TCLC the power to possess the property without judicial order amounting to a *pactum commissorium* that is prohibited under the law. Lastly, Spouses Villanueva claimed that they learned the foreclosure only in January 2005. They denied receiving any notice of foreclosure and its publication.

On March 29, 2012, the RTC dismissed the complaint and upheld the validity of the extrajudicial foreclosure sale. Also, it ruled that the agreement between the parties is not a *pactum commissorium* absent stipulation on automatic appropriation of the mortgaged property,¹¹ thus:

WHEREFORE, in view of foregoing, the instant case is ordered DISMISSED. The counterclaim for damages is likewise dismissed for lack of proof.

No cost.

SO ORDERED.¹²

Dissatisfied, Spouses Villanueva elevated the case to the CA docketed as CA-G.R. CEB-CV No. 04387. On March 27, 2017, the CA reversed the RTC's findings and declared void the extrajudicial foreclosure sale, certificate of sale and final deed of sale. It ruled that TCLC has no authority to foreclose the mortgage and that paragraph 3 of the real estate mortgage is merely an expression of Spouses Villanueva's amenability to an extrajudicial foreclosure sale. The contract did not grant TCLC the special

⁴ *Id.* at 118-120, 135-136. On August 20, 2003, Spouses Villanueva, through their representative Jeverlyn C. Villanueva, received a Final Demand dated July 30, 2002 from TCLC demanding the payment of their amortizations in arrears. The spouses failed to heed the demand.

⁵ *Id.* at 140-141. Application dated July 27, 2004.

⁶ *Id.* at 142. Auction sale was held on December 7, 2004.

⁷ *Id.* at 143-144.

⁸ *Id.* at 144. The Certificate of Sale was registered on January 27, 2005.

⁹ *Id.* at 145-146. The Final Deed of Sale was executed on January 31, 2006.

¹⁰ *Id.* at 45-51.

¹¹ *Id.* at 79-91; penned by Presiding Judge Jemena L. Abellar Arbis.

¹² *Id.* at 91.



power to sell the mortgaged property in a public auction,¹³ to wit:

WHEREFORE, the appeal is GRANTED. The *Decision* dated March 29, 2012 of the RTC, 6th Judicial Region, Branch 6, Kalibo, Aklan in Civil Case No. 7823 is REVERSED and SET ASIDE. The extrajudicial foreclosure, *Certificate of Sale* and *Final Deed of Sale* issued thereunder are hereby declared NULL and VOID for lack of the special power or authority to sell the mortgaged property.

SO ORDERED.¹⁴

TCLC sought reconsideration but was denied.¹⁵ Hence, this petition. TCLC maintains that paragraph 3 of the real estate mortgage provided the authority to foreclose the mortgage and sell the property to satisfy Spouses Villanueva's debt. Furthermore, Spouses Villanueva are already barred from questioning the extrajudicial proceedings because they failed to redeem the property within one year from the issuance of the certificate of sale. On the other hand, Spouses Villanueva insisted that TCLC was only granted the power to possess the property but not to foreclose the mortgage in case of non-payment of the loan.¹⁶

RULING

It is settled that the literal meaning shall govern when the terms of a contract are clear and leave no doubt as to the intention of the parties.¹⁷ The courts have no authority to alter the agreement or to make a new contract for the parties. Their duty is confined to the interpretation of the terms and conditions which the parties have made for themselves without regard to their wisdom or folly. The courts cannot supply material stipulations or read into the contract words which it does not contain. It is only when the contract is vague and ambiguous that the courts are permitted to interpret the agreement and determine the intention of the parties.¹⁸ Here, the real estate mortgage contract is complete and leave no doubt as to the authority of TCLC to sell the mortgaged property.

Specifically, in extrajudicial foreclosure of real estate mortgage, a special power to sell the property is required which must be either inserted in or attached to the deed of mortgage. Apropos is Section 1 of Act No. 3135,¹⁹ as amended by Act No. 4118,²⁰ thus:

Section 1. When a sale is made under a **special power inserted in or attached to any real estate mortgage** hereafter made as security for the payment of money or the fulfillment of any other obligation, the provisions

¹³ *Supra* note 1.

¹⁴ *Rollo*, p. 26.

¹⁵ *Id.* at 41-43.

¹⁶ *Id.* at 213-216.

¹⁷ CIVIL CODE, Art. 1370.

¹⁸ *Pan Pacific Service Contractors, Inc. v. Equitable PCI Bank*, 630 Phil. 94 (2010).

¹⁹ An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real Estate Mortgages, Act No. 3135, March 6, 1924.

²⁰ Approved on December 7, 1933.



of the following section shall govern as to the manner in which the sale and redemption shall be effected, whether or not provision for the same is made in the power. (Emphasis supplied.)

The special power or authority to sell finds support in civil law. Foremost, in extrajudicial foreclosure, the sale is made through the sheriff by the mortgagees acting as the agents of mortgagors-owners. Hence, there must be a written authority from the mortgagor-owners in favor of the mortgagees. Otherwise, the sale would be void.²¹ Moreover, a special power of attorney is necessary before entering “*into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration.*”²² Thus, the written authority must be a special power of attorney to sell.²³

Here, it is undisputed that no special power to sell was attached to the real estate mortgage. TCLC relied on the express provision of paragraph 3 of the agreement allowing it “*to take any legal action as may be necessary to satisfy the mortgage debt.*” Yet, the CA construed the provision as a mere grant of authority to foreclose but not to sell the property. On this point, we find reversible error on the part of the appellate court.

Indeed, while it has been held that a power of sale will not be recognized as contained in mortgage unless it is given by express grant and in clear and explicit terms, and that there can be no implied power of sale where a mortgage holds by a deed absolute in form, it is generally held that no particular formality is required in the creation of the power of sale. Any words are sufficient which evince an intention that the sale may be made upon default or other contingency.²⁴ In this case, paragraph 3 of the real estate mortgage sufficiently incorporated the required special power of attorney to sell. It expressly provides that the mortgaged property shall be foreclosed, judicially or extra judicially, upon failure to satisfy the debt, and that TCLC, the mortgagee, is appointed as attorney-in-fact of Spouses Villanueva, the mortgagors, to do *any legal action as may be necessary to satisfy the mortgage debt*,²⁵ thus:

²¹ See Article 1874, Civil Code. When a sale of a piece of land or any interest therein is through an agent, the authority of the latter shall be in writing; otherwise, the sale shall be void.

²² See Article 1878, paragraph 5, Civil Code. Special powers of attorney are necessary in the following cases:

X X X X

(5) To enter into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration;

X X X X

²³ *Sps. Baysa v. Sps. Plantilla, et al.*, 763 Phil. 562, 570 (2015).

²⁴ *Tan Chat v. C.N. Hodges, et al.*, 98 Phil. 928, 930-931 (1956), citing 41 Corpus Juris, p. 926.

²⁵ cf. *Spouses Baysa v. Spouses Plantilla, supra* at 566. In that case, paragraph 13 of the REM reads: “In the event of non-payment of the entire principal and accrued interest due under the conditions described in this paragraph, the mortgagors expressly and specifically agree to the extra-judicial foreclosure of the mortgaged property.” We ruled that based on the text of paragraph 13, the petitioners agreed only to the holding of the extrajudicial foreclosure should they default in their obligations. Their agreement was a mere expression of their amenability to extrajudicial foreclosure as the means of foreclosing the mortgage, and did not constitute the special power or authority to sell the mortgaged property to enable the mortgagees to recover the unpaid obligations. We declared that what was necessary was the special power or authority to sell – whether inserted in the REM itself, or annexed thereto – that authorized the respondent spouses to sell in the public auction their mortgaged property.

3. That in case of non-payment or violation of the terms of the mortgage or any of the provision of the Republic Act No. 728 as amended **this mortgage shall immediately be foreclosed judicially or extra-judicially as provided by law and the mortgagee is hereby appointed attorney-in-fact of the mortgagor(s) with full power and authority to take possession of the mortgaged properties** without the necessity of any judicial order or any other permission of power, and **to take any legal action as may be necessary to satisfy the mortgage debt**, but if the mortgagor(s) shall well and truly fulfill the obligation above stated according to the terms thereof then this mortgage shall become null and void. (Emphases supplied.)

The provision is pellucid and the CA cannot limit the authority granted to TCLC. Also, Spouses Villanueva cannot claim, contrary to their plain agreement, that they granted TCLC merely the power to possess but not to sell the mortgaged property. Clearly stipulated in the real estate mortgage was the appointment of TCLC as attorney-in-fact, with authority to sell or otherwise dispose of the subject property, and to apply the proceeds to the payment of the loan. This provision is customary in mortgage contracts, and is in conformity with the principle that when the principal obligation becomes due, the things in which the mortgage consists may be alienated for the payment to the creditor.²⁶

It is basic that obligations arising from contracts have the force of law between the parties and should be complied with in good faith.²⁷ The stipulations are binding between the contracting parties unless they are contrary to law, morals, good customs, public order or public policy.²⁸ Corollarily, Spouses Villanueva, who freely signed the real estate mortgage contract, cannot now be allowed to renege on their obligation. The validity or compliance of a contract cannot be left to the will of one of the parties.²⁹

Finally, the sheriff complied with the procedures under Act No. 3135³⁰ for the extrajudicial foreclosure of the mortgaged property. The RTC and CA both held that Spouses Villanueva were notified of the auction sale and that the posting and publication requirements were duly complied with.³¹ Verily, these involve factual issues and are beyond the ambit of this Court's jurisdiction in a petition for review on *certiorari*. It is not this Court's task to go over the proofs presented below to ascertain if they were appreciated and

²⁶ CIVIL CODE, Art. 2087.

²⁷ *Id.*, Art. 1159.

²⁸ *Id.*, Art. 1306.

²⁹ *Id.*, Art. 1308.

³⁰ Sections 3 and 4, Act No. 3135, as amended, provide:

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.

³¹ *Rollo*, pp. 25 and 87-89.

weighed correctly, most especially when the trial court and the appellate court speak as one in their findings and conclusions.³²

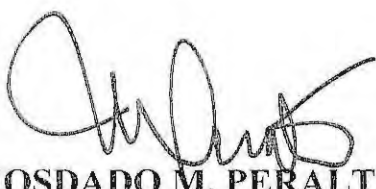
FOR THESE REASONS, the petition is **GRANTED**. The Court of Appeals' Decision dated March 27, 2017 in CA-G.R. CEB-CV No. 04387 is **REVERSED** and **SET ASIDE**. The Regional Trial Court's Decision dated March 29, 2012 in Civil Case No. 7823 dismissing the complaint is **REINSTATED**.

SO ORDERED.

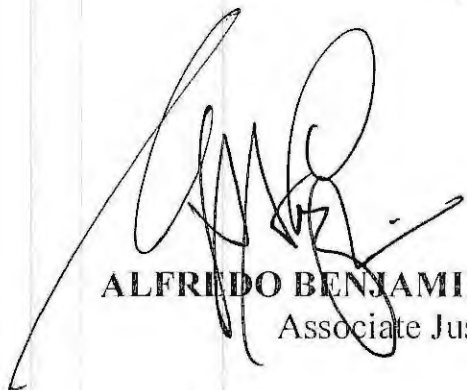


MARIVIC V. LOPEZ
Associate Justice

WE CONCUR:



DIOSDADO M. PERALTA
Chief Justice



ALFRIDO BENJAMIN S. CAGUIOA
Associate Justice



JOSE C. REYES, JR.
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice

³² *Gatan v. Vinarao*, G.R. No. 205912, October 18, 2017, 842 SCRA 602; *Heirs of Teresita Villanueva, et al. v. Heirs of Petronila Suquia Mendoza, et al.*, 810 Phil. 172 (2017); and *Bacsasar v. Civil Service Commission*, 596 Phil. 858 (2009).

CERTIFICATION

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



DIOSDADO M. PERALTA
Chief Justice