



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 15 July 2020 which reads as follows:

“G.R. No. 223406 (*Alicia Vda. De Bocaling, Petitioner, v. Philippine National Bank, Respondent*). – The Court NOTES the letter dated July 2, 2020 of Ms. Jane G. Sabido, Chief, Archives Section, Judicial Records Division, Court of Appeals, Manila, transmitting the original records, transcript of stenographic notes, and rollo of CA-G.R. CV No. 99533 in compliance with the Resolution dated March 9, 2020.

Before the Court is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court assailing the Decision² dated October 9, 2015 and Resolution³ dated March 7, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 99533 which reversed the Decision⁴ dated March 10, 2008 of the Regional Trial Court (RTC) of Manila in Civil Case No. 00-98441. The RTC enjoined the Philippine National Bank (respondent) from disposing the properties of *Alicia Vda. De Bocaling*, (petitioner) in a foreclosure sale.

Petitioner raises a procedural issue that respondent’s appeal to the CA was not perfected due to the late filing of its Motion for Reconsideration (MR)⁵ from the RTC’s Decision.⁶ Respondent justified the delay stating that it did not receive any notice of the RTC Decision. Petitioner counters that the registry return receipt and the fact that it represents is presumed to be regular because the preparation of the registry return receipt is part of the official duties of the court employee concerned. Also, the logbook of respondent listing the orders or any

¹ *Rollo*, pp. 3-9.

² *Id.* at 12-27; penned by Associate Justice Edwin D. Sorongon with Associate Justices Ricardo R. Rosario and Eduardo B. Peralta, Jr. concurring.

³ *Id.* at 28-29.

⁴ *Id.* at 65-69.

⁵ *Id.* at 30-63.

⁶ *Id.* at 65-69.

pleadings it received is a private document, which cannot overcome the presumption of regularity in the issuance of the registry return receipt.⁷

The Court is not persuaded.

When service of notice is an issue, the rule is that the person alleging that the notice was served must prove the fact of service. In other words, the burden of proving notice rests upon the party asserting its existence. In civil cases, service made through registered mail is proved by the registry receipt issued by the mailing office *and* an affidavit of the person mailing. Absent one or the other, or worse both, there is no proof of service.⁸ Rule 13, Section 13 of the Rules of Court explicitly provides:

SEC. 13. Proof of Service.—xxx *If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office.* The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee. (Emphasis supplied)

In *Ting and Chan-Azajar v. Court of Appeals*,⁹ the prosecution failed to prove that the issuer was served with a notice of dishonor. Accordingly, the copy of the demand letter allegedly sent to petitioners through registered mail and its corresponding registry receipt were insufficient to prove that the petitioners actually received the notice of dishonor.¹⁰

More recently, in *Valley Golf and Country Club, Inc. v. Dr. Reyes, et al.*,¹¹ the Court reiterated that as the party asserting receipt of notice, Valley Golf bears the burden to prove notice. To be sure, the mere presentation of the registry return card does not satisfy the required proof. The law mandates that there is a need to present *both* the registry receipt issued by the mailing office and the affidavit of the person mailing.¹²

⁷ *Id.* at 6.

⁸ *The Government of the Philippines v. Aballe*, 520 Phil. 181, 189-190 (2006), citing *Petition for Habeas Corpus of Benjamin Vergara v. Judge Gedorio, Jr.*, 450 Phil. 623, 634 (2003).

⁹ 398 Phil. 481-496 (2000).

¹⁰ *Id.* at 491.

¹¹ 772 Phil. 458-470 (2005).

¹² *Id.* at 468, citing *Rep. of the Philippines v. Resins, Incorporated*, 654 Phil. 369, 380 (2011).

The same rule applies in this case. The registry receipt alone is not sufficient to prove that notice was made to respondent. The law is clear that it is the registry receipt issued by the mailing office and the affidavit of the person mailing which prove service made through registered mail.¹³ Thus, it was not an error for the CA to allow the appeal to proceed.

Anent petitioner's entitlement to an injunctive writ, suffice it to say that for such writ to issue, there must be a showing that the applicant is entitled to the relief being demanded.¹⁴ Being an extraordinary event, a writ of preliminary injunction must be granted only in the face of injury to actual and existing substantial rights. When the complainant's right is doubtful or disputed, he does not have a clear right; hence, injunction is not proper. While it is not required that the right claimed by the applicant be conclusively established, it is still necessary to show, at least tentatively, that the right exists and is not vitiated by any substantial challenge or contradiction.¹⁵

Here, the CA did not err when it ruled that petitioner failed to establish by a clear and unmistakable right that the foreclosure proceedings were invalid for the failure of respondent to comply with the mandatory requirements of the law. Neither did she successfully prove the extinguishment of their obligation. Under the circumstances, there can be no clear and unmistakable right to warrant the issuance of a writ of injunction in favor of petitioner since her alleged rights are disputed by respondent. The CA aptly observed:

The burden of proving plaintiffs-appellees' cause of action lies with no less than the plaintiffs-appellees themselves. They must satisfactorily show the facts upon which they ground their complaint and PNB is under no obligation to prove their defense. *Ei incumbit probatio qui dicit, non qui negat* (he who asserts, not he who denies, must prove) *At bar, when plaintiffs-appellees assert that their obligation was extinguished by payment, they have the burden to show that indeed they have already fully paid their obligation with PNB. However, they failed to discharge the onus. Our scrutiny of the records revealed that they have an existing balance per records of the PNB submitted before the trial court. This balance becomes the basis of protest and the consequent foreclosure of the mortgaged property. When PNB made the demand after plaintiffs-appellees failed to pay their obligation pursuant to the restructured*

¹³ *The Government of the Philippines v. Aballe*, *supra* note 8 at 190.

¹⁴ *Saycon v. CA and Degamo*, G.R. No. 238822, October 9, 2019, citing Section 3, Rule 58 of the Rules of Court.

¹⁵ *Sumifru (Philippines) Corporation v. Cereño*, G.R. No. 218236, February 7, 2018, 855 SCRA 177, 185-186.

scheme, the latter has given the PNB the right to foreclose the subject property. We herein stress that plaintiffs-appellees duly acknowledged the veracity of the credit facility agreement as well as the promissory note executed by them in favor of PNB which they never repudiated at all. This they cannot deny after reaping the benefits derived therefrom. *Although they alleged payment in full, they nevertheless, failed to substantiate the same after PNB adduced evidence that they have an outstanding balance due. Absent any proof showing that these documents were forged, this Court is constrained to uphold their genuineness and authenticity.*

Furthermore, plaintiffs-appellees' challenge to the foreclosure proceedings has equally no merit. Aside from the fact that they cannot support the claim of payment, they failed to prove that the foreclosure proceedings was invalid and made with malice and bad faith. *Foreclosure proceedings have in their favor the presumption of regularity and the burden of evidence to rebut the same is on the party that seeks to challenge the proceedings.* Records support PNB's faithful compliance with the mandatory requirement under Act No. 3135, hence, the foreclosure proceeding is valid.¹⁶ (Emphasis supplied)

The basic rule is that he who alleges must prove his case. Regrettably for petitioner, her allegation of payment or extinguishment of the obligation is belied by the evidence. She admittedly constituted a real estate mortgage to secure the performance of their obligation to respondent, and as such, she was fully aware of the consequences on her rights in the properties given as collaterals should the loan secured be unpaid. The foreclosure of the mortgages would be the remedy provided by law for the mortgagee to exact payment.¹⁷

Finally, petitioner failed to establish the irreparable injury that she would suffer should the writ of preliminary injunction not be issued. Essentially, she feared the loss of her possession and ownership of the mortgaged properties. Still, such fear of potential loss of possession and ownership did not constitute the requisite of irreparable injury that would have warranted the issuance of the writ of injunction.¹⁸

WHEREFORE, the petition is **DENIED**. The Decision dated October 9, 2015 and Resolution dated March 7, 2016 of the Court of Appeals in CA-G.R. CV No. 99533 are **AFFIRMED**.

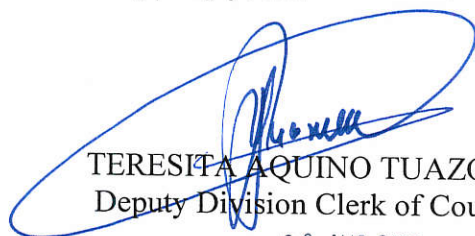
¹⁶ *Rollo*, pp. 25-26.

¹⁷ *BPI v. Judge Hontanosas, Jr., et al.*, 737 Phil. 38, 55 (2014), citing *China Banking Corp. v. CA*, 333 Phil. 158, 174 (1996).

¹⁸ *Id.*

SO ORDERED.” (GAERLAN, J., designated as additional member, per Special Order No. 2780 dated May 11, 2020).

Very truly yours,


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court *nu 8/23*
28 AUG 2020

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HON. PRESIDING JUDGE (reg)
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(Civil Case No. 00-98441)

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Please notify the Court of any change in your address.
GR223406. 7/15/2020(115 & 138)URES