

DR. PEDRO A. DANAÑO (SUBSTITUTED BY HIS HEIRS MARTIN DANAÑO, MINDA DANAÑO AND CO-PETITIONER CONCEPCION S. DANAÑO) AND CONCEPCION S. DANAÑO, PETITIONERS, VS. HON. COURT OF APPEALS, BA...

G.R. No. L-48276. September 30, 1987

Ponente: PARAS, J.

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PARAS, J.:

These are two petitions for review on certiorari of the decision[1] of respondent Court of Appeals in CA-G.R. No. 59865-R, promulgated on April 14, 1978 (Rollo, p. 22), affirming the decision[2] of the Court of First Instance of Manila with modifications. The dispositive portion of the appellate judgment reads:

"WHEREFORE, with the modifications that the actual and compensatory damages are eliminated, the moral damages are reduced to P30,000.00, and the attorney's fees are likewise reduced to P5,000.00, the decision appealed from is affirmed.

The facts of the cases involved are quoted from the decision of respondent Court of Appeals as follows:

"On February 27, 1963, spouses Pedro Danao and Concepcion S. Danao applied for a commercial credit line of P20,000.00 with the People's Bank and Trust Company. The application having been granted, the parties on March 14, 1963, executed a Commercial Credit Agreement and Mortgage in which, among others, they stipulated:

"WHEREFORE, the said mortgagor(s) have offered and agreed to secure the repayment of the said credits and advances with interest due or accruing thereon as well as any other liability or liabilities of the said mortgagors to the said mortgagee, now existing, due or to become due, or hereafter incurred by means of a good and valid mortgage as hereinafter stated, and the mortgagee has consented to grant the line of credit applied for a good and sufficient security;

'NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein set forth the parties do have agreed and do hereby agree, as follows:

'The said mortgagor(s) shall be and are hereby granted a line of credit not to exceed at any one time the sum total of TWENTY THOUSAND AND 00/000 (P20,000.00) at NINE (9%) per cent per annum, which credit shall be available to said Mortgagor(s) or EITHER OF THEM in the form of advances from time to time to be evidenced by promissory note or notes. x x x'

and on the mortgage that -

'This mortgage shall continue as security for the payment of the indebtedness herein contracted by said Mortgagor(s) as aforesaid, and of all money expended or liabilities incurred by virtue hereof, with interest thereon, as well as security for the repayment of any other sums now or hereafter owing to the said Mortgagee in

addition to or aside from the credit facilities herein granted by the Mortgagee to the Mortgagor(s).

'F. - In the event that the Mortgagor(s) should fail to pay the sums of money secured by the mortgage, or any part thereof, in accordance with the terms and conditions herein set forth, x x x, the Mortgagee shall have the right, at its election, to foreclose this mortgage extrajudicially. x x x.

'The proceeds of such sale of the mortgaged properties shall be applied as follows: x x x. 3) To the satisfaction of the principal amount of obligation herein secured; and 4) To the satisfaction of all further obligations owing by the Mortgagor(s) to the Mortgagee.'

"Given as a security for the credit line of P20,000.00 was a parcel of land in the City of Baguio, covered by Transfer Certificate of Title No. T-233, together with the buildings and improvements thereon.

"The spouses availed of the credit facility granted them by the People's Bank and Trust Company not only during the original term of one year, but also during the renewals or extensions thereof. The last promissory note signed by Pedro Danao during the extensions was fully paid on July 5, 1968.

"It appears that October 28, 1963, Antonio Co Kit and Pedro Danao signed a promissory note for P10,000.00. The two agreed to pay the note, jointly and severally, within 179 days after date. The check for the proceeds of the note was issued in the name of Antonio Co Kit alone. The note was renewed by Antonio Co Kit and Pedro Danao for the amount of P8,650.00 on April 27, 1964, payable within 91 days. They promised to pay the amount, jointly and severally.

"On September 30, 1968, counsel for the People's Bank and Trust Company wrote a demand letter to Antonio Co Kit and Pedro Danao for the payment of the balance of the promissory note in the amount of P5,870.09.

"On July 14, 1969, the manager of the People's Bank and Trust Company wrote another demand letter, this time to Pedro Danao, for the payment of the balance of P4,225.15, excluding interest.

"On September 19, 1969, the People's Bank and Trust Company filed a complaint in the City Court of Baguio City against Antonio Co Kit and Pedro Danao, praying that judgment be rendered, ordering defendants, jointly and severally, to pay it (plaintiff) the sum of P4,225.15, plus interest thereon at the rate of 13.5% per annum from July 8, 1969 until full payment, attorney's fees in the sum equal to 10% of the total amount due, and the costs of suit.

"On January 5, 1971, the City Court issued an order, dismissing the complaint 'for lack of interest on the part of the plaintiff.'

"On March 1, 1971, the branch manager of the People's Bank and Trust Company, Baguio Branch, wrote a letter to Pedro Danao, informing the latter that they had filed a petition for foreclosure to the City Sheriff of Baguio City, attaching therewith a copy of the petition. Stated therein is that the parcel of land covered by Transfer Certificate of Title No. 2033 will be sold at public auction. According to the petition, the land is security for the payment of any other sums owing to the Bank 'in addition to or aside from x x x credit facility.' The indebtedness to be satisfied out of the proceeds of the foreclosure sale is P3,024.03, exclusive of interest.

"On March 4, 1971, notice of public auction sale was published in the Baguio Midland Courier, a weekly newspaper published and edited in the City of Baguio and which is of wide circulation in the City, province of Benguet and in the Philippines, for three consecutive weeks, once a week. Copies of the notice were also posted in three public and conspicuous places in Baguio for the information of the public. In the published notice of public auction sale, it is stated that in the petition for foreclosure it is alleged that Mortgagors' spouses PEDRO DANA0 and CONCEPTION DANA0, x x x, x x x failed to pay the x x x loan when it fell due thereby violating the terms and conditions of the real estate mortgage above mentioned.

"On March 10, 1971, counsel for the People's Bank and Trust Company, Baguio Branch, wrote a letter,

informing the Bank of the full payment of the obligations of Antonio Co Kit and Pedro Danao.

"On March 16, 1971, the branch manager of the People's Bank and Trust Company executed a cancellation of the real estate mortgage, stating therein that the mortgagors had fully paid the obligation or indebtedness secured by the mortgage.

"On June 16, 1972, Pedro Danao and Concepcion S. Danao filed a complaint for damages against the Bank of Philippine Islands, as successor to the People's Bank and Trust Company, in the Court of Instance of Manila, where it was docketed as Civil Case No. 8781.

"The complaint alleged, inter alia, that both the petition for foreclosure and the notice of public auction sale published in the 'Baguio Midland Courier' have neither legal nor factual bases, because (1) while the credit line was availed of from time to time in different amounts by promissory notes, the credits and loans obtained were dully paid in 1968 and since then no further loans were availed of under the credit line secured by mortgage of the plaintiffs' properties; (2) the plaintiffs' alleged indebtedness mentioned in the defendant's petition for foreclosure and in the consequent notice of public auction sale was the balance due on a 'clean loan' granted by the defendant to Antonio Co Kit, although admittedly the promissory note was cosigned by plaintiff Pedro Danao, and the same was a distinct and separate transaction from the plaintiffs' credit line, and was not covered nor secured by the plaintiffs' properties mortgaged to the defendant. The complaint further alleged that the publication of the notice of public auction sale in the 'Baguio Midland Courier' was malicious and/or with deliberate intent, or was due to gross negligence, causing the plaintiffs, who are respected members of the community of Baguio City, untold mental and moral anguish, serious anxiety, besmirched reputation and social humiliation; that as a result of his social humiliation, anxiety, mental and moral anguish, plaintiff Pedro Danao suffered serious heart attack and was hospitalized and confined in bed for a period of one year, causing him to incur hospitalization and medical expenses, and resulting in the loss of his income from his medical practice. The plaintiffs ask for actual or compensatory, moral and exemplary damages, as well as attorney's fees.

"In its answer with conterclaim, the People's Bank and Trust Company contended that in filing the petition for extra-judicial foreclosure of the mortgage with the consequent publication of notice of public auction sale, it merely exercised its legal right as creditor-mortgagee after plaintiff Pedro Danao had defaulted, despite repeated demands, in the payment of the indebtedness or obligation contracted by him jointly and severally with Antonio Co Kit; that in exercising such right, it acted lawfully, in good faith and with full justification to protect its interest; and, as affirmative defense, alleged that, contrary to plaintiffs' allegations, the Commercial Credit Agreement and Mortgagee provides that the mortgage shall continue as security for the payment of the indebtedness therein contracted by the mortgagors, 'as well as security for the repayment of any other sums x x x (then or thereafter) owing to the said mortgagee in addition to or aside from the credit facilities (therein) granted by the Mortgagee to the Mortgagors; and that plaintiff Pedro Danao's solidary obligation upon the promissory note signed by him as co-maker jointly and severally with Antonio Co Kit constitutes a further obligation secured by the aforementioned mortgage, in addition to the indebtedness arising from the commercial credit line, which additional obligation was subsisting at the time the extrajudicial foreclosure proceeding was commenced.

"After the issues had been joined upon the filing of the answer to the counterclaim and reply to answer, the case was set for pre-trial.

"After trial on the merits, the Court of First Instance of Manila rendered a decision the dispositive part of which read as follows:

'WHEREFORE, in view of all the foregoing considerations, the Court hereby renders judgment in favor of the plaintiffs and against the defendant ordering the latter to pay the former the sum of P14,290.00 as actual and compensatory damages, P100,000.00, as moral damages, and P10,000.00, as exemplary damages, in addition to

P20,000.00 as and for attorney's fees, as well as the costs of suit. The counterclaim is dismissed.

"SO ORDERED."

From this decision only the Bank of the Philippine Islands as successor of Peoples Bank and Trust Company appealed. Respondent Court affirmed the trial court's decision with some modifications as earlier quoted. Both parties moved for reconsideration. The motion for reconsideration filed by Pedro and Concepcion Danao, as plaintiff-appellees (Rollo, p. 39) was denied in respondent Court's resolution dated May 9, 1978 (Rollo, p. 48), while the motion for reconsideration filed by the Bank of the Philippine Islands, as defendant-appellant (Rollo, p. 41), was also denied in the resolution of the same Appellate Court dated September 6, 1978 (Rollo, p. 53).

Hence, these petitions filed by both parties.

The petition in G.R. No. L-48276 was filed with the Court by the spouses Dr. Pedro A. Danao and Concepcion S. Danao on June 7, 1978 (Rollo, p. 5); while the petition in G.R. No. L-48980 was filed by the Bank of the Philippine Islands on October 7, 1978 (Rollo, p. 7).

In G.R. No. L-48276 respondent bank filed its comment on the petition for review on certiorari (Rollo, L-48276, p. 114) in compliance with the resolution of the First Division of this Court dated June 27, 1978 (ibid, p. 107) on August 8, 1978 while the petitioners filed their reply on September 14, 1978 (ibid, p. 265) in compliance with the resolution of August 21, 1978 (ibid, p. 261). The Court gave due course to the petition in the resolution dated October 4, 1978 (ibid, p. 274). The brief for the petitioners was filed on December 5, 1978 (ibid, p. 277); while the brief for the respondent, was filed on February 3, 1979 (ibid, p. 301). Petitioner having failed to file the required reply brief within the period granted by the Court which expired on March 1, 1979, the Court resolved on April 16, 1979 (ibid, p. 305) to declare the case submitted for decision.

In G.R. No. L-48980, respondents filed their comment on the petition for review on certiorari on November 15, 1978 (Rollo, L-48980, p. 62) in compliance with the resolution of the Second Division of this Court dated October 18, 1978 (ibid, p. 61) while petitioner filed its Reply on January 18, 1979 (ibid, p. 76) in compliance with the resolution of December 4, 1978 (Rollo, p. 73). The Court resolved to give due course to the petition in the resolution of March 21, 1979 (ibid, p. 83). The brief for petitioner was filed on June 23, 1979 (ibid, p. 98); while the brief for respondent was filed on July 8, 1979 (ibid, p. 101). On September 14, 1979 the Court resolved to consider the case submitted for decision (ibid, p. 105), petitioner having failed to file its reply brief within the period granted by the Court which expired on August 7, 1979.

On April 29, 1980, the spouses Pedro and Concepcion Danao, petitioners in L-48276 and private respondents in L-48980 moved for the consolidation of the two cases (Rollo, L-48276, p. 308) which was granted by the First Division of the Court in its resolution dated May 7, 1980 (ibid, p. 311). On July 2, 1980 the Second Division of the Court also ordered the consolidation of L-48980 with L-48276 and the transfer of the case to the First Division of the Court (Rollo, L-48980, p. 110).

On August 16, 1985, counsel for the spouses Pedro and Concepcion Danao manifested to the Court the death of his client Pedro Danao and moved for the substitution of the heirs Martin Danao and Minda Danao as co-petitioners and co-respondents of Concepcion Danao in the instant cases (Rollo, L-48276, p. 327). On September 4, 1985 the heirs submitted to the Court a copy of the death certificate of Pedro A. Danao (ibid, p. 341), hence the effecting of the substitution.

In L-48276, petitioners raised the following assignment of errors:

FIRST - THE COURT OF APPEALS ERRED IN FINDING THAT THE REAL ESTATE MORTGAGED

UNDER THE COMMERCIAL CREDIT AGREEMENT & MORTGAGE BY AND BETWEEN THE PARTIES ALSO SECURED THE CLEAN LOAN EXTENDED TO MR. ANTONIO CO KIT, THE PROMISSORY NOTE FOR WHICH WAS CO-SIGNED BY PETITIONER DR. PEDRO A. DANAOS.

SECOND - THE COURT OF APPEALS ERRED IN FINDING THAT THE ILLNESS AND HEART ATTACKS SUFFERED BY PETITIONER DR. PEDRO A. DANAOS HAD NO CASUAL RELATIONSHIP TO THE FORECLOSURE OF MORTGAGE AND PUBLICATION OF THE NOTICE OF AUCTION SALE.

THIRD - THE COURT OF APPEALS ERRED IN REDUCING THE MORAL DAMAGES AND ATTORNEY'S FEES AWARDED BY THE TRIAL COURT.

In L-48980, petitioner bank raised the following assignment of errors:

I. The Court of Appeals erred in holding that petitioner's predecessor Peoples Bank and Trust Company, by filing a civil complaint against Antonio Co Kit and Pedro A. Danao in the Baguio City Court for the collection of the unpaid balance of the latter's promissory note "had waived" the remedy of extra-judicial foreclosure of mortgage, and "such complaint barred the subsequent petition for foreclosure of mortgage."

II. The Court of Appeals erred in concluding that the extrajudicial foreclosure of mortgage ultimately resorted to as a last recourse to enforce payment of the outstanding balance long past due on Co Kit and Danao's promissory note "was unwarranted", and in not holding that said bank as creditor-mortgagee acted lawfully and was fully justified in exercising such remedy.

III. The Court of Appeals erred in awarding moral damages, exemplary damages and attorney's fees to the plaintiffs-appellees, private respondents herein.

IV. The Court of Appeals erred in not awarding at least temperate damages and reasonable attorney's fees upon defendant-appellant bank's counterclaim against the plaintiffs-appellees, private respondents herein.

Plaintiffs' (Petitioners in L-48276 and respondents in L-48980) claim for damages is predicated on the theory that the real estate mortgage executed by them on March 14, 1963 in favor of defendant did not secure the solidary obligation of Dr. Danao upon the promissory note signed by him jointly and severally with Antonio C. Kit on October 28, 1963 and therefore, defendant's act in foreclosing said mortgagee extrajudicially was unwarranted. (Respondent's brief in L-48276, Rollo, p. 301).

Placed in proper perspective, the deed of mortgage otherwise called "Commercial Credit Agreement and Mortgage" is under scrutiny not for the purposes of the loan itself because the same has been fully paid but for the determination of the legality or illegality of the foreclosure proceedings instituted by the bank, which is now the subject of the action for damages.

The creditor bank insists that the promissory note co-signed by Dr. Danao with Antonio C. Kit as accommodation party for the latter, is secured by the deed of mortgage in favor of the bank so that in the foreclosure proceedings so instituted, it was merely exercising its rights as stipulated in the contract and was acting with justification. (L-48980, Petition, Rollo, p. 19).

Be that as it may, such distinction is in fact immaterial for even assuming that the promissory note of Antonio C. Kit was indeed included among the obligations secured by the deed of mortgage of Dr. Danao, still the creditor bank in opting to file a civil action (Civil Case No. 4281) in the Baguio City Court for the collection of the unpaid balance of P4,225.15 plus interest has abandoned its mortgage lien on the property in question.

Thus the Court has invariably held that:

"x x x The rule is now settled that a mortgage creditor may elect to waive his security and bring, instead, an ordinary action to recover the indebtedness with the right to execute a judgment thereon on all the properties of

the debtor, including the subject matter of the mortgage x x x, subject to the qualification that if he fails in the remedy by him elected, he cannot pursue further the remedy he has waived." (Manila Trading and Supply Co. vs. Co Kim, et al. 71 Phil. 448 [1941]; Movido v. RFC, et al. 105 Phil. 886 [1959]).

Anent real properties in particular, the Court has laid down the rule that a mortgage creditor may institute against the mortgage debtor either a personal action for debt or a real action to foreclose the mortgage. In other words, he may pursue either of the two remedies, but not both. As explained by the Court, the rule is as follows:

"For non-payment of a note secured by mortgage, the creditor has a single cause of action against the debtor. This single cause of action consists in the recovery of the credit with execution of the security. In other words, the creditor in his action may make two demands, the payment of the debt and the foreclosure of the mortgage. But both demands arise from the same cause, the non-payment of the debt, and, for that reason, they constitute a single cause of action. Though the debt and the mortgage constitute separate agreements, the latter is subsidiary to the former, and both refer to one and the same obligation. Consequently there exists only once cause of action for a single breach of that obligation. Plaintiff, then, by applying the rule above stated cannot split up his single cause of action by filing a complaint for payment of the debt, and thereafter another complaint for foreclosure of the mortgage. If he does so, the filing of the first complaint will bar the subsequent complaint. By allowing the creditor to file two separate complaints simultaneously or successively, one to recover his credit and another to foreclose his mortgage, we will, in effect, be authorizing him plural redress for a single breach of contract at much cost to the courts and with so much vexation and oppression to the debtor.

"x x x a rule that would authorize the plaintiff to bring a personal action against the debtor and simultaneously or successively another action against the mortgaged property, would result not only in multiplicity of suits so offensive to justice (Soriano v. Enriquez, 24 Phil. 584) and obnoxious to law and equity (Osorio v. San Agustin, 25 Phil. 404), but also in subjecting the defendant to the vexation of being sued in the place of his residence or of the residence of the plaintiff, and then again in the place where the property lies." (Bachrach Motor Co. Inc. v. Esteban Icarangal, et al., 38 Off. Gaz. 389 [1939]).

Evidently, the prior recourse of the creditor bank in filing a civil action against the Danao spouses and subsequently resorting to the complaint of foreclosure proceedings, are not only a demonstration of the prohibited splitting up of a cause of action but also of the resulting vexation and oppression to the debtor.

Both the lower court and the Court of Appeals found that the People's Bank and Trust Co. (succeeded by the Bank of the Philippine Islands) acted unlawfully and without justification in extra-judicially foreclosing the disputed mortgage and hence the Danao spouses are entitled to damages.

As basis for actual damages, the lower court relied on the testimonies of Mrs. Danao and Dr. Rodolfo Perez and the medical certificates of the various doctors and came out with the award of actual and compensatory damages in the total amount of P14,290.00 in favor of the same spouses, computed as follows: (1) P1,290.00 representing medical and hospitalization expenses of Pedro Danao while confined at the Manila Medical Center from October 1 to October 12, 1972; (2) P7,000.00 as costs for various examinations; and (3) P6,000.00 supposed to be the amount of income lost by Pedro Danao from his medical practice because of this incident.

But the evidence as correctly appreciated by the Court of Appeals shows that the first mild heart attack suffered by Pedro Danao occurred in October 1977 or more than seven months after the initial publication of the notice of foreclosure sale and the second heart attack occurred in October 1978 or more than 19 months after said publication. No less important is the fact that Dr. Rodolfo Perez, the regular attending physician of Pedro Danao and the latter's own witness, testified to the effect, that aforesaid heart attacks were the natural result or outgrowth of a chronic rheumatic heart disease of long standing which developed over a period of years, possibly even before 1966. (Decision D.A. G.R. No. 59865-R; Rollo, pp. 36-37).

The second item was found to be unsupported by evidence while as to the third item, Pedro Danao did not testify to prove the alleged lost income. (Ibid, p. 37). In the case of *Sy v. Court of Appeals* (131 SCRA 127 [1984]) the Court ruled that an alleged loss of income is not recoverable for being speculative if no receipt or any kind of evidence on the matter is presented to prove it.

The Court has ruled that actual or compensatory damages are "those recoverable because of pecuniary loss in business, trade, property, profession, job or occupation and the same must be proved, otherwise if the proof is flimsy and non-substantial, no damages will be given." (*Perfecto v. Gonzales*, 128 SCRA 640 [1984]).

More specifically in point to the case at bar, the Court has said:

"x x x Well settled is the rule that even if the complaint filed by one against the other is clearly unfounded this does not necessarily mean, in the absence of specific facts proving damages, that said defendant really suffered actual damages over and above attorney's fees and costs. The Court cannot rely on its speculations as to the fact and amount of damages. It must depend on actual proof of the damages alleged to have been suffered." (Ibid, p. 640).

On the other hand, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission. The assessment of such damages, except liquidated ones, is left to the discretion of the court, according to the circumstances of the case. (*People v. Baylon*, 129 SCRA 63 [1984]).

As a general rule, the filing alone of the foreclosure application should not be a ground for an award of moral damages.

In the case at bar, however, the main bone of contention is not only the filing of the petition for foreclosure proceedings but the manner in which the same was carried out, such as the publication of the notice of extrajudicial foreclosure and sale at public auction in a Sunday edition of the *Baguio Midland Courier* in the society page, instead of in the "legal notices" or "classified ads" sections as usual in these types of notices, in extraordinarily large and boxed advertisements, which allegedly bespoke the bank's malicious intent to embarrass and harass the Danao spouses which actuations are contrary to the canons of conduct provided for in Articles 19, 20 and 21 of the Civil Code. (Comment, Rollo, p. 67)

Both the lower court and the Court of Appeals took cognizance of the spouses' mental anguish, serious anxiety and besmirched reputation traceable to the unfortunate publication (Record on Appeal, p. 79; Rollo, p. 38).

For moral damages, the lower court awarded P100,00.00 but the Court of Appeals reduced said amount to P30,000.00 and attorney's fees from P20,000.00 to P5,000.00.

We have laid down the rule that the fairness of the award of damages by the trial court also calls for appellate determination (*Luzon Concrete Products Inc. v. Court of Appeals*, 135 SCRA 456 [1985]), such that where the award of moral damages is far too excessive compared to the actual losses sustained by the claimants, the former may be reduced. (*Siguenza v. Court of Appeals*, 137 SCRA 577-579). In fact, We have held that reduction of moral damages is justified where the negligence of petitioner bank and its employees is not wanton and reckless. (*Bank of the Philippine Islands v. Court of Appeals*, 117 SCRA 628).

After a careful review of the records, no plausible reason can be found to justify the reversal of the findings of the Court of Appeals, however in view of the embarrassing circumstances attendant to the foreclosure notice, as already explained hereinabove, We hereby MODIFY the judgment of the respondent Court of Appeals by increasing the award of moral damages to P60,000.00 and the attorney's fees to P10,00.00, and by imposing exemplary damages the amount of P20,000.00.

SO ORDERED.

Teehankee, C.J., Narvasa, and Cruz, JJ., concur.

Gancayco, J., on leave.

[1] Penned by Justice Luis B. Reyes with the concurrence of Justices Mama D. Busran and Nestor D. Alampay.

[2] Penned by Judge Guillermo P. Villasor.

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