

INDUSTRIAL FINANCE CORPORATION, PETITIONER, VS. HON. SERGIO A. F. APOSTOL, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, BRANCH XVI, QUEZON CITY, JUAN DELMENDO AND HONORATA DEL...

G.R. No. L-35453. September 15, 1989

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

The present petition is a direct appeal from the summary judgment dated March 15, 1972 of the then Court of First Instance of Rizal, Branch 16 (Quezon City) in Civil Case No. Q-15942 entitled "Juan A. Delmendo and Honorata Delmendo v. Joaquin Padilla and Socorro Padilla and Industrial Finance Corporation" as well as the order of said court dated July 7, 1972 denying petitioner's motion for reconsideration of said judgment.

As gathered from the records, the facts are as follows:

In 1968, spouses Joaquin Padilla and Socorro Padilla bought on credit three units of Isuzu trucks from the Industrial Transport and Equipment, Inc. They executed a promissory note for P159,600, the balance of the purchase price, securing payment thereof by a chattel mortgage of said trucks and, as additional collateral, a real estate mortgage on their property covered by Transfer Certificate of Title No. T-133625 in favor of the seller.[1] Subsequently, Industrial Transport and Equipment, Inc. indorsed the note and assigned the real estate mortgage to petitioner Industrial Finance Corporation (IFC), which assignment was duly registered in the Registry of Deeds of Quezon City and annotated on the title of the mortgaged realty.

On May 15, 1970, in view of the failure of the Padillas to pay several installments on the note, the assignee IFC sued Joaquin Padilla in the Court of First Instance of Rizal (Quezon City) for the recovery of the unpaid balance on the note including attorney's fees.[2]

In due time, decision was rendered on April 16, 1975, the dispositive portion of which reads:

"WHEREFORE, premises considered judgment is hereby rendered in favor of plaintiff (IFC) and against defendant (Joaquin Padilla) to pay plaintiff.

"A. the sum of P82,996.75 with twelve (12%) percent interest per annum from the date of the filing of the complaint until fully paid;

"B. to pay attorney's fees in the amount of P20,749.93 equivalent to 25% of the whole amount due; and

"C. to pay the costs of this suit."[3]

On appeal to the Court of Appeals, the trial court was sustained except for the modification that the attorney's fees were reduced to 12% of the balance.[4] As no appeal was brought by either of the parties, the appellate court decision became final and executory.

Meanwhile, on September 9, 1971, private respondents Juan Delmendo and Honorata Delmendo filed a complaint against petitioner IFC, as principal party, and the Padilla spouses, as formal parties, in respondent Court of First Instance (Civil Case No. Q-15942). The Delmendos alleged that they were the transferees of the real property covered by Transfer Certificate of Title No. T-133625 of the Quezon City Register of Deeds which was mortgaged earlier by the Padillas to the Industrial Transport and Equipment, Inc. to secure the payment of a promissory note in the sum of P159,600 and then assigned to petitioner IFC. The Delmendos prayed for the cancellation of the mortgage lien annotated on Transfer Certificate of Title No. T-133625 and the delivery to them by petitioner of the owner's copy of said title with damages and attorney's fees, considering that petitioner IFC had waived its rights over the mortgage when it instituted a personal action against the Padillas in Civil Case No. Q-14417 for collection of a sum of money.

Petitioner IFC moved for the dismissal of the complaint, contending that it had not waived its right over the mortgage lien.

The Delmendos filed a motion for summary judgment which respondent trial court granted. Thus:

"WHEREFORE, for being meritorious, the same is hereby granted. Judgment is rendered, as prayed for in the Complaint.

"a) declaring the real estate mortgage in favor of the Industrial Transport and Equipment Corporation and the assignment thereof in favor of the Industrial Finance Corporation forfeited, waived and abandoned, and therefore released pursuant to law and jurisprudence;

"b) ordering the Register of Deeds of Quezon City to remove and cancel from Transfer Certificate of Title No. 133625, Book T-672, Page 25, the annotations of the real estate mortgage (PE-8612/T-133625 and of the assignment of mortgage (PE-8768/T-133265);

"c) ordering the defendant Industrial Finance Corporation to surrender to the Register of Deeds of Quezon City the owner's copy of TCT No T-133626 upon receipt of this order; and

"d) with costs against the defendants.

"SO ORDERED." [5]

Upon denial of its motion for reconsideration, petitioner IFC came to this Court raising the issue of whether, by filing a personal action for the recovery of a debt secured by a real estate mortgage, petitioner is deemed to have abandoned, ipso jure, its mortgage lien on the property in question.

The above question is certainly far from novel. In a host of decided cases, the most recent of which is *Danao v. Court of Appeals*, [6] this Court has resolved this issue in the affirmative.

In *Manila Trading and Supply Co. v. Co Kim and So Tek*, [7] we declared:

"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, subject to the qualification that if he fails in the remedy by him elected, he cannot pursue further the remedy he has waived."

The case of *Bachrach Motor Co., Inc. v. Icarangal and Oriental Commercial Co., Inc.*, [8] which similarly involves a promissory note secured by a real estate mortgage, gives us an extensive discussion on the rule, to wit:

"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 his 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 one 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 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 a plural redress for a single breach of contract at so much cost to the courts and with so much vexation and oppression to the debtor.

"We hold, therefore, that, in the absence of express statutory provisions, 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. By such election, his cause of action can by no means be impaired, for each of the two remedies is complete in itself. Thus, an election to bring a personal action will leave open to him all the properties of the debtor for attachment and execution, even including the mortgaged property itself. And, if he waives such personal action and pursues his remedy against the mortgaged property, an unsatisfied judgment thereon would still give him the right to sue for a deficiency judgment, in which case, all the properties of the defendant, other than the mortgaged property, are again open to him for the satisfaction of the deficiency. In either case, his remedy is complete, his cause of action undiminished, and any advantages attendant to the pursuit of one or the other remedy are purely accidental and are all under his right of election."

We likewise held in *Movido v. RFC and the Provincial Sheriff of Samar*,^[9] that "a mortgagee who sues and obtains a personal judgment against a mortgagor upon his credit waives thereby his right to enforce the mortgage securing it."

Therefore, by instituting Civil Case No. Q-14417 in the Court of First Instance of Rizal (Quezon City) to recover the unpaid balance on the promissory note from the Padilla spouses and by subsequently obtaining a judgment in its favor, petitioner IFC is considered to have abandoned its mortgage lien on the subject property covered by Transfer Certificate of Title No. T-133625.

The end result is the discharge of the real estate mortgage and the Delmendos, having purchased the mortgaged property, automatically step into the shoes of the original mortgagors with every right to have the title delivered to them free from said encumbrance.

WHEREFORE, finding no error in the summary judgment under appeal, the same is hereby affirmed in toto.

Considering the length of time that this case has been pending, this decision is declared immediately executory.

SO ORDERED.

Gutierrez, Jr., Bidin, and Cortes, JJ., concur.
Feliciano, J., on leave.

[1] Rollo, pp. 31-32, 37.

[2] Civil Case No. Q-14417.

[3] See certified xerox copy of the decision of the Court of Appeals in CA-G.R. CV No. 59391 in "*Industrial Finance Corp. v. Joaquin Padilla*", promulgated on March 8, 1983.

[4] *supra*.

[5] Rollo, pp. 87-88.

[6] No. 48276, September 30, 1987, 154 SCRA 446

[7] 71 Phil. 448, 449 (1941).

[8] 68 Phil. 287, 293-294 (1939).

[9] 105 Phil. 886 (1959).

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