

PHILIPPINE BANK OF COMMERCE, PLAINTIFF AND APPELLEE, VS. TOMAS DE VERA, DEFENDANT AND APPELLANT.

G.R. No. L-18816. December 29, 1962

Ponente: BARRERA, J.

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BARRERA, J.:

This is an appeal[1] taken by defendant Tomas de Vera from the decision of the Court of First Instance of Manila (in Civil Case No. 35169) ordering him to pay to plaintiff Philippine Bank of Commerce, his outstanding obligation of P99,033.20, with 6% interest from April 16, 1956 until fully paid, and P5,000.00 as attorney's fees, plus costs.

The facts of the case, which are undisputed, are briefly stated in the trial court's decision, to wit:

"By virtue of a contract (Exh. A), entitled 'Consolidation of First Heal Estate Mortgage and Deed of Assignment', executed on April 26, 1951, defendant Tomas de Vera is indebted to the plaintiff in the total amount of P127,312.24, guaranteed by a real estate mortgage of the defendant's land, particularly described in TCT No. 1631 of the Register of Deeds of Pasay City and in TCT No37641 of the Register of Deeds of the City of Rizal (now Pasay City), with the same terms and conditions embodied in the original Deed of Real Estate Mortgage and the Deed of Assignment of Real Estate Mortgage, both dated February 28, 1947. Presumably, both documents and the document Exh. A, were registered in the Registry of Deeds of Pasay City.

"Upon maturity of the defendant's obligation on March 15, 1956, and despite several demands, the defendant failed to pay the outstanding balance of his obligation in the amount of P99,033.20 as of January 31, 1958, under the contract Exh. A, for which reason, the plaintiff filed a petition with the Sheriff of Pasay City on March 14, 1956 (Exh. B) to sell the properties, subject to the Real Estate Mortgage executed and duly recorded in the Registry of Deeds on May 17, 1949, for the sum of P150,000.00. Another document, Assignment of Real Estate Mortgage, was executed on the same day, May 17, 1947, which two documents, were later on consolidated on April 26, 1951, in the document Exh. A.

"The Sheriff, acting accordingly, sold at public auction the two parcels of Land covered by TCT No. 1631 and No. 37641, to the highest bidder, which was the plaintiff creditor in this case, Philippine Bank of Commerce, for the amount of P86,700.00, and the corresponding certificate of sale was issued by the Sheriff of Pasay City (Exh. C) dated April 16, 1956. The plaintiff now, thru the present action, seeks to recover from the defendant the balance of his obligation after deducting the price of the land sold at public auction, of which, together with the interest up to January 31, 1958, there remained an outstanding balance of P99,033.20 as per the Statement of Account (Exh. D).

On the basis of the foregoing facts, the trial court rendered the decision above adverted to.

The sole issue to be resolved in this case is whether the trial court acted correctly in holding appellee Bank entitled to recover from appellant the sum of P99,033.20 as deficiency arising after the extra judicial foreclosure, under Act No. 3135, as amended, of the mortgaged properties in question. It is urged, on appellant's part, that since Act No. 3135, as amended, is silent as to the mortgagee's right to recover deficiency arising after an

extrajudicial foreclosure sale of a mortgage, he (mortgagee) may not recover the same.

A reading of the provisions of Act No. 3135, as amended, (re extra-judicial foreclosure) discloses nothing, it is true, as to the mortgagee's right to recover such deficiency. But neither do we find any provision thereunder which expressly or impliedly prohibits such recovery.

Article 2131 of the new Civil Code, on the contrary, expressly provides that "the form, extent and consequences of a mortgage, both as to its constitution, modification and extinguishment, and as to other matters not included in this Chapter, shall be governed by the provisions of the Mortgage Law and of the Land Registration Law." Under the Mortgage Law, which is still in force, the mortgagee has the right to claim for the deficiency resulting from the price obtained in the sale of the real property at public auction and the outstanding obligation at the time of the foreclosure proceedings. (See *Soriano vs. Enriquez*, 24 Phil. 584; *Banco de Islas Filipinas vs. Concepcion e Hijos*, 53 Phil. 86; *Banco Nacional vs. Barreto*, 53 Phil. 101.) Under the Rules of Court (Sec. 6, Rule 70), "Upon the sale of any real property, under an order for a sale to satisfy a mortgage or other encumbrances thereon, if there be a balance due to the plaintiff after applying the proceeds of the sale, the court, upon motion, should render a judgment against the defendant for any such balance for which, by the record of the case he may be personally liable to the plaintiff. It is true that this refers to a judicial foreclosure, but the underlying principle is the same, that the mortgage is but a security and not a satisfaction of indebtedness. As the trial court correctly observed:

"* * * the real estate mortgage does not, in any way, limit nor minimize the amount of the obligation. Its only purpose is to guarantee the fulfillment of said obligation and, in case of default on the part of the debtor mortgagor, the creditor mortgagee may execute the obligation on the real property given as a mortgage by way of judicial or extra-judicial foreclosure, according to our statutes and procedure. Therefore, by analogy and applying the same principle of equity, if after the sale of the mortgaged property at public auction, there is a resulting deficiency in the application for the payment of the obligation of the debtor mortgagor to the creditor mortgagee, the latter may proceed in a proper action against the debtor mortgagor for the deficiency of the former's obligation. It is of no importance whether the buyer of the highest bidder in the public auction is the creditor itself.

"By following the defendant's theory, there may occur a ridiculous situation in which, when the amount of the loan is very much bigger than the value of the mortgaged property, by abandonment or default of the debtor mortgagor, his obligation may automatically be reduced in quantity, against the will and consent of the creditor mortgagee, and in prejudice of the latter, which situation is absurd and not contemplated by Act No. 3135, as amended."

Let it be noted that when the legislature intends to foreclose the right of a creditor to sue for any deficiency resulting from the foreclosure of the security given to guarantee the obligation, it so expressly provides. Thus, in respect to pledges, Article 2115 of the new Civil Code expressly states: "If the price of the sale is less (than the amount of the principal obligation) neither shall the creditor be entitled to recover the deficiency, notwithstanding any stipulation to the contrary." Likewise, in the event of a foreclosure of a chattel mortgage on the thing sold in installments "he (the vendor) shall have no further action against the purchaser to recover any unpaid balance of the price. Any agreement to the contrary shall be void" (Article 1484, paragraph 3, *ibid*). It is then clear that in the absence of a similar provision in Act No. 3135, as amended, it can not be concluded that the creditor loses his right given him under the Mortgage Law and recognized in the Rules of Court, to take action for the recovery of any unpaid balance of the principal obligation, simply because he has chosen to foreclose his mortgage extra-judicially pursuant to a special power of attorney given him by the mortgagor in the mortgage contract. As stated by this Court in *Medina vs. Philippine National Bank* (56 Phil. 651), a case analogous to the one at bar, the step taken by the mortgagee-bank in resorting to extra-judicial foreclosure under Act No. 3135, was "merely to find a proceeding for the sale, and its action can not be taken to mean a waiver of its right to demand the payment

of the whole debt."

Wherefore, finding no reversible error in the decision appealed from the court a quo, the same is hereby affirmed with costs against the defendant-appellant. So ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Paredes, JJ., concur.

[1] Originally taken to the Court of Appeals, but certified to us by said court on July 27, 1961, because it involves only questions of law.

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