

QUIRINO SORIANO, PLAINTIFF-APPELLANT, VS. PARSONS HARDWARE CO., INC., ET AL., DEFENDANTS-APPELLEES.

G.R. No. L-24008. August 31, 1970

Ponente: CASTRO, J.

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CASTRO, J.:

This is an appeal from the order of June 5, 1964 of the Court of First Instance of Cavite, in its civil case N-639, dismissing the plaintiff Quirino Soriano's amended complaint for annulment of a foreclosure sale, recovery of the mortgaged pro-perties subject of the said sale, and damages.

The defendant Parsons Hardware Company, Inc. (herein-after referred to as the Company) was the holder of two mort-gage deeds over four parcels of registered land, all located in the province of Cavite, executed in 1955 by the spouses Claro Soriano and Irene Quilao. After Soriano's death, Quirino Soriano was appointed administrator of the former's estate in special proceeding 6107 of the same court. (The date of death of Claro Soriano and the date of appointment of Quirino Soriano as admi-nistrator are nowhere to be found in the record.)

On January 14, 1958 the Company filed a "Contingent Claim Against the Estate" on the basis of various debts owing to it by the Soriano spouses, including the ones covered by the two aforementioned real estate mortgage deeds. Paragraph 5 of the said pleading recites: "That the herein creditor-claimant relies upon the above-mentioned mortgages for the satisfaction f its claims against the defendant Claro Soriano, but nevertheless reserves its right to file, as it hereby files, a Contingent claim for whatever amount that may be left unsatisfied after full exhaustion of all of the above-mentioned securities or for whatever deficiency judgment that may accrue in favor of creditor-claimant rising from the non-satisfaction of the above-referred to claims after judicial foreclosure of the above mortgages." In the same pleading, the Company prayed that its "contingent claim ... be approved, and upon verification of the amount of the said claim to direct the administrator to pay the same."

Four years later, or more precisely on February 28, 1962, the Company sent a letter to the provincial sheriff of Cavite, re-requesting him to foreclose the mortgages extra-judicially, pursuant to the terms of the mortgage deeds. Acting on this letter, the she scheduled the public auction sale of the encumbered proper-ties for November 12, 1962.

On November 9, 1962, three days prior to the scheduled date of the sale, a "Joint Request For Transfer Of Extrajudicial Sale," executed by the Company, by the plaintiff administrator, and by Irene Quilao Vda. de Soriano, was filed with the sheriff. The burden of this joint request was the postponement of the auc-tion sale to December 20, 1962. This request was granted.

Thereafter the public sale was held as scheduled, and to the Company, which was the only bidder, were sold the mortgaged properties in the amount of P62,624.36.

One year after the public sale, or more precisely on December 20, 1963, the plaintiff, in his capacity as adminis-trator of the intestate estate of Claro Soriano, lodged the pre-sent complaint, claiming that the

foreclosure sale was void as the Company, having priorly elected to pursue its claim in the intestate proceedings, could not in law be permitted to turn around and instead pursue the remedy of extra-judicial fore-closure. He therefore asked that the foreclosure sale be annulled and the properties subject thereof be ordered reverted to the estate of Claro Soriano.

The court a quo dismissed the amended complaint; hence this appeal.

The issue tendered for resolution is, whether under section 7 of Rule 87 (now Section 7 of Rule 86) of the Rules of Court the filing of the "Contingent Claim" by the Company in the intestate proceeding constituted a bar to the extrajudicial foreclosure sale thereafter had.

Section 7 of Rule 87 (now section 86) enumerates three distinct, independent and mutually exclusive remedies available to a mortgage creditor for the satisfaction of his credit. He may (a) "abandon the security and prosecute his claim in the manner provided in this rule, and share in the general distri-bution of the assets of the estate;" or (b) "foreclose his mort-gage or realize upon his security, by ordinary action in court, making the executor or administrator a party defendant, and if there is a judgment for a deficiency, after the sale of the mort-gaged premises, or the property pledged, in the foreclosure or other proceeding to realize upon the security, he may claim his deficiency judgment in the manner provided in the preceding section;" or (c) "rely upon his mortgage or other security alone, and foreclose the same at any time within the period of the sta-tute of limitations, and in that event he shall not be admitted as a creditor, and shall receive no share in the distribution of the other assets of the estate."

It seems rather clear, in this case before us, that the Company never intended to abandon its securities because by the very terms of its "Contingent Claim" it explicitly and unequivocally indicated that it would rely, basically, upon the mort-gages, reserving its right to ask for a deficiency judgment, if, after a judicial foreclosure of its securities, a portion of the loan remained unsatisfied. No doubt, the Company elected the second remedy. But election by the creditor of any of the three options is not jurisdictional, and as long as no positive forward step has been taken by him in pursuance of the option selected, he is not precluded from dropping the option already chosen and resorting to any of the two other options available to him.

It is also obvious that the primary objective of the Com-pany in filing its "Contingent Claim" was to serve notice to the intestate court - before such notice became time-barred - that it might have to ask the court to have its remaining receivables satisfied in the intestate proceeding. Such notice was indubitably necessary to enable the intestate court, at the proper time, to take appropriate action thereon.

Section 7 of Rule 87 (now Rule 86) does no more than pro-vide the mortgage-creditor, in the interest of speedy, orderly and inexpensive settlement of the estate of a decedent, a choice of one of three courses of action for the satisfaction of its loan portfolio. An entirely distinct and independent act, to be performed in conformity with procedures laid down by the Legislature or by this Court, is still necessary to effectuate and achieve the remedy elected. Thus, in this case, the mere fact that the Company formally informed the intestate court that it was electing foreclose judicially its mortgages did not automatically ope-rate as authority for the court motu proprio to-put into motion the machinery necessary for the judicial foreclosure of the said securities. It was indispensable for the Company to file an in-dependent complaint for that specific purpose. The Company did no more than signify its election of an option.

The plaintiff, upon the other hand, even after the Company turned around and actually announced an extra-judicial foreclosure of the properties, did nothing to prevent or impede the foreclosure. In fact, in a positive way, he even encouraged the sheriff to proceed with the auction sale, by expressly re-requesting the latter to re-schedule the date of the sale. And after the sale had taken place, the plaintiff slumbered at a distance, until the,

very last day allowed him for redemption of the proper-ties sold.

From February 28, 1962 when the extrajudicial foreclosure of the mortgages was commenced, up to December 23, 1963, the last day of the period for redemption - a total period of one year, nine months and twenty-two days - the plaintiff administrator never lifted a finger to question the validity of the foreclosure proceedings. In point of fact, as has already been stated, he even consented to the extrajudicial foreclosure by seeking the postponement of the sale. It is now too late in the day for the plaintiff to assert that the indelible taint of estoppel that has irretrievably and unmistakably stained the totality of his actuations may still be erased.

WHEREFORE, the judgment a quo, dismissing the amended complaint, is affirmed. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.

Makasiar, J., took no part.

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