

SPOUSES ROMEO S. GUTIERREZ AND GINA GUTIERREZ, PLAINTIFFS-APPELLANTS, VS. ESTATE OF COLUMBA BAYLON ABELA, VICENTE B. ABELA, ANITA B. ABELA CASTANEDA, ESTATE OF ROMEO B. ABELA, HE...

Ponente: DE GUIA-SALVADOR, R., J.

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DE GUIA-SALVADOR, R., J.:

The appeal at bench seeks the reversal and setting aside of the Decision[1] dated May 29, 2012 of the Regional Trial Court of Manila, Branch 173 (court a quo) in Civil Case No. 05-113635, which dismissed plaintiffs-appellants' complaint for judicial foreclosure of mortgage, thus:

“WHEREFORE, the complaint against the defendants ESTATE OF COLUMBA BAYLON ABELA, VICENTE B. ABELA, ANITA B. ABELA CASTANEDA, ESTATE OF ROMEO B. ABELA, HELEN FRANCISCO ABELA, HERSHEY F. ABELA, ROBIN F. ABELA, RONALD Z. ABELA, ROMEO Z. ABELA, JR., RICHARD Z. ABELA, RODNEY Z. ABELA, REA Z. ABELA, ROSARIO Z. ABELA and RACHEL Z. ABELA is hereby dismissed without prejudice to the filing of a claim by plaintiffs SPS. ROMEO S. GUTIERREZ AND GINA GUTIERREZ in the proceedings for the partition/settlement of the estate of COLUMBA BAYLON ABELA for the unpaid mortgage in the amount of P400,000.00 plus interest.”[2]

The Facts

On September 9, 1999, the late Columba Baylon (Columba) obtained a loan of P400,000.00 from the plaintiffs-appellants, spouses Romero and Gina Gutierrez (Gutierrez spouses), payable within one year, with a stipulated interest rate of four percent (4%) per month.[3] To secure the payment of the loan, Columba, represented by her son and attorney-in-fact Romeo Abela (Romeo), executed a Real Estate Mortgage in favor of the Gutierrez spouses as mortgagees, covering her “one-half (½) share/interest in the subject real property representing her share in the conjugal property plus one-fourth (¼) of her interest over the estate of her deceased husband,”[4] consisting of more or less 93 square meters of a parcel of land located in Tondo, Manila, covered by Original Certificate of Title No. 8070 of the Registry of Deeds of the City of Manila.[5] The Real Estate Mortgage was duly registered.[6]

Meanwhile, Columba passed away on December 30, 1999, while Romeo died on February 1, 2004. Alleging the failure to pay the principal amount of the loan as well as the stipulated interests on its maturity, on August 19, 2005, the Gutierrez spouses sent demand letters to the heirs of Columba, namely: Vicente and Anita, and to the heirs of Romeo, namely: Helen, Hersey, Robin, Ronald, Romeo, Jr., Richard, Rodney, Rea, Rosario and Rachel, all surnamed Abela, (hereinafter defendants-appellees) for the payment of their outstanding loan.[7]

With their demands for payment unheeded, on October 6, 2005, the Gutierrez spouses commenced a suit[8] for the foreclosure of the mortgaged property. As of the filing of the complaint, the defendants-appellees' total outstanding obligation amounted to Php2,128,000.00 inclusive of the accumulated stipulated interest.[9]

On December 15, 2005, the defendants-appellees filed their Answer,[10] principally assailing the validity of the

Real Estate Mortgage and alleging, in support thereof, that in her lifetime, Columba could neither read nor understand English;[11] and that on the date of the execution of the mortgage, she was “old and mentally incapacitated”, in addition to being already bed-ridden and almost immobile.[12] Given Columba's frail condition, the defendants-appellees contended that Columba could not have validly consented to the Contract of Mortgage nor to the Special Power of Attorney executed in favor of Romeo.[13] Allegedly, Columba's signature in the mortgage contract had been forged.[14]

On May 29, 2012, the court a quo rendered the appealed decision. While finding that the Gutierrez spouses were able to prove the validity of the Real Estate Mortgage, the court nevertheless dismissed the complaint on the ground that the claim should have been filed instead in the proceedings for the partition/settlement of the estate of Columba Baylon. The court ratiocinated in this wise:

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“Although the plaintiffs were able to comply with the Real Estate Mortgage Law under Act 4118, as amended, (by registering said mortgage with the Register of Deeds of Manila [citation omitted] and making said mortgage binding against third persons) and ably to prove that the late COLUMBA BAYLON ABELA and the deceased ROMEO B. ABELA personally appeared before the notary public, xxx however, it is to be noted that COLUMBA BAYLON ABELA and ROMEO B. ABELA were already dead before the filing of the instant case. This claim is one which survives the death of the two (2) of the defendants.

Nonetheless, it is clear that plaintiffs cannot maintain the present suit against defendants. Rather, their remedy is to file this claim in the proceeding for the partition/settlement against the Estate of Columba Baylon via a Petition for the Issuance of Letters of Administration in accordance with Rule 79, Sec. 2 of the RULES OF COURT, xxx.”[15] (Emphasis supplied)

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The Issue

Aggrieved by the decision of the court a quo, the Gutierrez spouses timely filed this appeal,[16] urging the reversal of the appealed decision, on a lone error, to wit:

“THE COURT A QUO SERIOUSLY ERRED IN DISMISSING THE COMPLAINT.”[17]

The Gutierrez spouses argue that a complaint for judicial foreclosure, being an action to enforce a lien on the real property of the deceased, is one that survives the death of the mortgagor and may thus proceed independently of any intestate proceeding before any court.[18]

The defendants-appellees did not file an appeal Brief.

The Court's Ruling

We find the instant appeal impressed with merit.

Albeit finding that the Gutierrez spouses were able to sufficiently establish the validity of the mortgage contract executed by the late Columba Baylon, the court a quo gravely erred in dismissing the instant complaint on the ground that the claim should be filed in the settlement proceedings of the estate of the late Columba.

Section 7, Rule 86 of the Rules of Court provides for the remedies available to a creditor who holds a claim against the deceased secured by a mortgage or other collateral security, viz:

“Section 7. Mortgage debt due from estate. — A creditor holding a claim against the deceased secured by mortgage or other collateral security, may abandon the security and prosecute his claim in the manner provided

in this rule, and share in the general distribution of the assets of the estate; or he may foreclose his mortgage or realize upon his security, by 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 mortgaged 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 he may rely upon his mortgage or other security alone, and foreclose the same at any time within the period of the statute 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 estate; but nothing herein contained shall prohibit the executor or administrator from redeeming the property mortgaged or pledged, by paying the debt for which it is held as security, under the direction of the court, if the court shall adjudge it to be for the best interest of the estate that such redemption shall be made.” (Emphasis supplied)

Simply stated, a secured creditor may avail of three (3) remedies in pursuing the satisfaction of the decedent's indebtedness, namely, he may (i) waive the mortgage and claim the entire debt from the estate of the deceased as an ordinary claim; (ii) foreclose the mortgage judicially and prove the deficiency as an ordinary claim; or (iii) rely on the mortgage exclusively, or other security and foreclose the same before it is barred by prescription, without the right to file a claim for any deficiency.[19] Although diverse and numerous, the options available to the mortgagee are alternative and not cumulative. An election of one remedy operates as a waiver or abandonment of the others.[20]

Section 7, Rule 86 of the Rules of Court also provides that in the event of the death of the debtor, the creditor who holds a claim secured by a mortgage, pledge, or any specific lien is entitled to disregard the former's personal liability and look solely to the security of the mortgage. In this regard, the creditor need not present his claim for allowance in the settlement proceeding in order to preserve his right to subject the property covered by the lien to the satisfaction of his debt.[21] Consequently, his failure to present it for allowance against the decedent's estate will not affect his lien which may still be enforced by appropriate proceedings.[22] There is nothing in the above-quoted Rule which requires the filing of the claim in the proceedings for settlement of the deceased mortgagor's estate, unless and until the creditor seeks to enforce a deficiency. In fact, the mortgage cannot be considered as a claim against the estate, but a right to subject specific property, arising from the contract of the debtor whereby during his lifetime, he set aside certain property for the payment of his obligations, where such property does not belong to the estate, except in so far as its value may exceed his debt.[23] Furthermore, the instrument being of record or the property being in the possession of the creditor is notice to all the world of the contract.[24]

Jurisprudence is rife with cases where the Supreme Court authorized the filing of a complaint for foreclosure, separate and distinct from the settlement proceedings. In *Maglaque, et al. vs. Planters Development Bank and Spouses Beltran*,[25] the High Court affirmed the right of the secured creditor to foreclose the mortgage judicially and prove any deficiency as an ordinary claim, rejecting the contention that the claim should be filed in the settlement of the estate of the deceased mortgagors. In *Testamentaria de Don Amadeo Matute Olave vs. Canlas*,[26] the Court emphasized that an action to enforce a lien on property may be prosecuted by the interested person against the executor or administrator independently of the testate or intestate proceedings.

Consequently, in the event of the judicial foreclosure of the decedent's property, it is imperative that the complaint be filed against the executor or administrator as a party defendant[27] and an indispensable party.[28] On the other hand, in case the decedent's estate has already been distributed, the action for foreclosure may be instituted against the heir to whom the mortgaged property has been awarded.[29]

Significantly, in the case of *Melgar vs. Buenviaje*,[30] the Supreme Court allowed a suit to proceed against the heirs of the deceased in the absence of an appointed administrator. The Court noted that no steps have been taken towards the settlement of the estate of the deceased, nor has an executor or administrator of the estate been

appointed, and thus ruled that under such circumstances, the heirs may be allowed to take the place of the decedent.[31] Moreover, the High Tribunal ruled that in case of unreasonable delay in the appointment of an executor or administrator of the estate or where the heirs resort to an extrajudicial settlement of the estate, the court may adopt the alternative of allowing the heirs of the deceased to be substituted for the deceased.[32]

In the case at bar, the Gutierrez spouses, as creditors holding a mortgage against the property of their deceased debtor, may either abandon their security and participate in the distribution of the general assets of the estate by prosecuting their claim in the settlement of Columba's estate, or, in the alternative, enforce their security by foreclosing the mortgage judicially.[33] In accordance with Sec. 7, Rule 86 of the Rules of Court and the jurisprudence above-cited, the Gutierrez spouses correctly availed of the latter option when they filed the instant complaint for judicial foreclosure, impleading the heirs of the late Columba. Having chosen such option, the Gutierrez spouses are deemed to have waived the other two remedies. Thus, the court a quo erred in dismissing plaintiffs-appellants' complaint on the ground that since it was filed only after the death of the debtor Columba, their remedy was to file their claim in the proceedings for the settlement of the estate of Columba.

Finally, records show that Columba died in 1999 and the instant complaint for judicial foreclosure was commenced in 2005, or six years after her demise. However, the records fail to show whether in the meantime an administrator for the estate of Columba has been appointed, or whether settlement proceedings have been initiated. Given the foregoing facts and in line with the ruling in *Melgar vs. Buenviaje*,^[34] the Gutierrez spouses as creditors can enforce their security by foreclosing the mortgage judicially and independently of the proceedings for the partition/settlement of the Estate of Columba.

WHEREFORE, premises considered, the instant appeal is hereby GRANTED and the appealed decision is REVERSED and SET ASIDE. The complaint for judicial foreclosure of mortgage, docketed as Civil Case No. 05-113635, is hereby reinstated and ordered remanded to the Regional Trial Court of Manila, Branch 173, for further proceedings.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Garcia, R.R. and Bueser, D.Q., JJ., concur.

[1] Records, pp. 225-234.

[2] *Id.*, p. 234.

[3] *Id.*, pp. 9-10, See Annex "C".

[4] *Id.*, p. 12.

[5] *Supra* note 3.

[6] *Supra* note 4.

[7] *Supra* note 1, pp. 13-18.

[8] *Id.*, pp. 2-5. The case was docketed as Civil Case No. 05-113635 for Foreclosure of Mortgage.

[9] Id., p. 4.

[10] Id., 27-32. The Answer was filed along with a Motion to Admit Attached Answer. (See also Records, pp. 23-26).

[11] Id., p. 28.

[12] Id., p. 29.

[13] Supra note 11.

[14] Supra note 12.

[15] Rollo, pp. 24-25.

[16] Supra note 1, pp. 235-236.

[17] Supra note 15, p. 43.

[18] Id., p. 49.

[19] Heirs of the Late Spouses Flaviano Maglasang and Salud Adaza-Maglasang vs. Manila Banking Corporation, G.R. No. 171206, September 23, 2013.

[20] Oscar M. Herrera, Special Proceedings and Special Rules Implementing the Family Courts Act of 1997, 2005, pp. 153-154, citing Osorio vs. San Agustin, 25 Phil. 404, 408 (1913).

[21] Vicente J. Fransisco, The Revised Rules of Court in the Philippines: Special Proceedings (Volume V-B), (1970), p. 209, citing 21 Am. Jur. 586.

[22] Id., p. 208.

[23] Supra note 21.

[24] Id.

[25] G.R. No. 109472, May 18, 1999.

[26] G.R. No. L-12709, February 28, 1962.

[27] Florenz D. Regalado, Remedial Law Compendium, Volume II, 1995, p. 70.

[28] Manuel V. Moran, Comments on the Rules of Court, Volume III, 1997, p. 634.

[29] Id.

[30] G.R. No. L-55750, November 8, 1989.

[31] Id.

[32] Id.

[33] Supra note 20.

[34] Id.

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