

MANUEL G. BUNAN, PLAINTIFF-APPELLEE, VS. FEDERICO A. SERRA, DEFENDANT-APPELLANT.

Ponente: CARANDANG, J.

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CARANDANG, J.:

Before this Court is an appeal seeking to nullify and set aside the Joint Summary Judgment dated 14 May 2012 of the Regional Trial Court Branch 45 of Masbate City which declared the Extra-Judicial Foreclosure of Mortgage as null and void and the Order dated 11 June 2012 which denied appellant Federico A. Serra's (appellant) Motion for Reconsideration.

The facts, as narrated by the lower court, are as follows:

The spouses Graciano Cornejo and Ester Mauleon (Cornejo Spouses) owned a parcel of land (subject property) in Kinamaligan, Masbate, Masbate described as follows:

“A parcel of land located at barrio Kinamaligan, Masbate, Masbate, containing an area of one thousand six hundred eighty square meters (1,680 sq.m.), bounded on the North by Espinosa; on the South, by the Provincial Road; on the East, by heirs of Anselmo Danao; and declared for taxation purposes in the name of Graciano Cornejo, as Mortgagor with residence and postal address at Osmeña St., Masbate City in favor the herein Mortgagee, with postal address at Medina Ext., Masbate City.”

On 15 January 1987, the Cornejo spouses obtained a loan from the appellant in the amount of P20,000.00 payable within sixty (60) days thereof, or until 16 March 1987. As a security of the loan, they executed a real estate mortgage on the subject property, in favor of the appellant. However, the Cornejo Spouses failed to pay their loan on or before the lapse of the agreed period. Thus, on 15 July 1987, appellant filed a petition for an extra-judicial foreclosure of the real estate mortgage. A Notice of Extra-Judicial Sale was then issued by the Office of the Provincial Sheriff of Masbate. However, the Extra-Judicial Sale did not push through. Thereafter, no further actions were made on the said extra-judicial foreclosure proceedings.

Meanwhile, in 1990, Graciano Cornejo sold the subject property to Porfirio Cornejo. On 14 November 2001, the Heirs of Felicitas M. Cornejo (Porfirio Cornejo, included) sold the subject property via a Deed of Extra-Judicial Partition Settlement of Estate with Simultaneous Sale of Land for P500,000.00 to Engr. Manuel Bunan (appellee), who later secured Transfer Certificate of Title No. T-15153 and Tax Declaration No. 18751 in his name over the subject property.

On 23 June 2011, or after the lapse of more than twenty years, appellant filed a new petition for Extra-Judicial Foreclosure with the Office of the Provincial Sheriff of Masbate of the subject property. Acting on the petition of the appellant, the Ex-Officio Sheriff of the Province of Masbate issued a Notice of Extra-Judicial Sale setting the sale of the subject property at public auction on 2 August 2011.

On 23 July 2011, the appellee filed Civil Case No. 6650 against the appellant for Annulment of Real Estate Mortgage and Extra-Judicial Foreclosure of Real Estate Mortgage, with Injunction and with Prayer for Issuance of Temporary Restraining Order. The appellee however failed to stop the scheduled auction sale. The Office of the

Provincial Sheriff of Masbate issued a Certificate of Sale in favor of the appellant for being the lone and highest bidder in the auction sale conducted.

On 2 September 2011, appellant filed CAD Case No. 610, against appellee and the Register of Deeds of Masbate for the issuance of the Writ of Possession to take possession of the foreclosed property during the redemption period. In answer to CAD No. 610, appellee argued that the Extra-Judicial Foreclosure of Mortgage of the mortgaged property and the auction sale conducted on 2 August 2011 are null and void as the appellant's right of action has already prescribed.

During the hearing held on 8 December 2011 in Civil Case No. 6650, the parties were ordered to submit their respective memoranda after they agreed to submit the two cases to a joint judgment including CAD Case No. 610 based on the pleadings and the documents they have submitted. Appellee filed his memorandum on 9 January 2012, while appellant filed his on 25 January 2012.

On 14 May 2012, the RTC issued the assailed Joint Summary Judgment, the dispositive part of which reads:

“WHEREFORE, premises considered, judgment is rendered as follows:

I. Declaring the Extra-Judicial Foreclosure of Mortgage and other proceedings related thereto, on August 2, 2011, on the Real Estate Mortgage executed on March 15, 1987, by the spouses Graciano Cornejo and Ester Mauleon in favor of Freddie A. Serra Null and Void;

II. Ordering the dismissal of CAD Case No. 610 for lack of Merit; and

III. No pronouncement as to claims and counterclaims for damages.

SO ORDERED.”[1]

In ruling in favor of the appellee, the RTC held that appellant's action for foreclosure of mortgage has already prescribed. Under Article 1142 of the Civil Code, an action to enforce a right arising from mortgage should be enforced within ten years from the time the right of action accrues. Since the actual foreclosure took place only on 2 August 2011, or more than twenty-four (24) years from the date the right to foreclose accrued, the said foreclosure proceeding is null and void. The RTC adds that while it appears that on 15 July 1987, appellant applied for an Extra-Judicial Foreclosure of the mortgaged property under Act No. 3135, as amended, that foreclosure, was not completed. Hence, the running of the 10-year period did not stop from setting in.

Appellant's motion for reconsideration was denied by the RTC. Consequently, appellant filed this instant appeal wherein he assigned the following errors:

“First: THAT THE COURT A QUO SERIOUSLY ERRED WHEN IT INVALIDATED THE AUCTION SALE LAST AUGUST 2, 2011 ON THE EXTRA-JUDICIALLY FORECLOSED PROPERTY OF SPOUSES GRACIANO CORNEJO AND ESTER MAULEON; AND

Second: THAT THE COURT A QUO SERIOUSLY ERRED WHEN IT DENIED APPELLANT OF HIS RIGHT TO POSSESS THE AUCTIONED PROPERTY DURING THE REDEMPTION PERIOD BEING THE HIGHEST BIDDER THEREOF.”[2]

On the first assigned error, appellant argues that his right to extra-judicially foreclose the mortgaged property has not yet prescribed because the running of the 10-year period was tolled when he initiated the extra-judicial foreclosure proceedings in 1987 as shown in the Notice of Extra-Judicial Foreclosure issued on 15 July 1987 with the corresponding publication and official receipts in connection thereto, although the auction sale did not push through because of reasons beyond his control. He also contends that when he again filed a petition for Extra-Judicial Foreclosure of the mortgaged property on 22 June 2011, it was just a continuation of the

Extra-Judicial Foreclosure proceedings he previously filed in 1987.

On the second assigned error, appellant contends that under Section 7 of Act No. 3135 (An Act to Regulate the Sale of Property under Special Powers Inserted In or Annexed to Real Estate Mortgages), it is his right as the purchaser of the mortgaged property in the auction sale to possess the mortgaged property during the one-year redemption period. Thus, he avers that the RTC erred when it denied him of his right to possess the same.

The instant appeal is not meritorious.

Under Article 1142 of the Civil Code, a mortgage action prescribes after ten (10) years. Jurisprudence has clarified this rule by holding that a mortgage action prescribes after ten (10) years from the time the right of action accrued.[3] Stated differently, an action to enforce a right arising from a mortgage should be enforced within ten (10) years from the time the right of action accrues; otherwise, it will be barred by prescription and the mortgage creditor will lose his rights under the mortgage.[4] The right of action accrues when the mortgagor defaults in the payment of his obligation to the mortgagee.[5] The prescription of action is however interrupted when they are (1) filed before the court, (2) when there is a written extra-judicial demand by the creditors, and (3) when there is any written acknowledgment of the debt by the debtor.[6]

In this case, appellant's right of action started to run when the Spouses Cornejo defaulted in the payment of their loan. The Real Estate Mortgage executed by the Cornejo spouses on 15 January 1987 states in part:

“That if within sixty (60) days the Mortgagor fails to pay or comply with any of the conditions and stipulations herein agreed upon, then the Mortgagee may, at his discretion declare this mortgage, due, payable and defaulted, the Mortgagee may immediately foreclose this mortgage judicially or extra-judicially under Act No. 3135 as amended by Act 4118.”

Appellant's right of action against the Cornejo spouses started to run when the agreed sixty-day period lapsed on 16 March 1987. Concededly, the said running of the prescriptive period was interrupted when appellant filed a Petition for Extra-Judicial Foreclosure of Real Estate Mortgage on 15 July 1987. However, as admitted by the appellant, the said extra-judicial foreclosure proceeding was discontinued. Therefrom, the running of the ten-year prescriptive period under Article 1142 of the Civil Code started to run anew. Hence, he had only until 1997 to pursue the said extra-judicial foreclosure proceedings. When appellant initiated a second petition for extra-judicial foreclosure of the real estate mortgage on 22 June 2011, more than twenty-three (23) years have already elapsed. Clearly, appellant's right of action against the Cornejo spouses was already barred by prescription. As opined by Sen. Arturo M. Tolentino, “although an action is started within the prescriptive period, if the plaintiff desists in its prosecution or judgment is unconditionally stayed for one reason or another, the running of the period of limitations is not suspended. The parties are left in exactly the same position as if no action had been commenced at all.”[7]

We cannot agree with the contention of the appellant that his 2011 Petition for Extra-Judicial Foreclosure of Real Estate Mortgage was just a continuation of his 1987 Petition for Extra-Judicial Foreclosure of Real Estate Mortgage. The fact that appellant initiated a new and separate petition in 2011 instead of continuing his previous petition filed in 1987 is an admission on his part that he abandoned his first petition.

Further, appellant is guilty of estoppel by laches for sleeping on his right for such a long period of time without any justifiable reason. Estoppel by laches or “stale demands” ordains that the failure or neglect, for an unreasonable and unexplained length of time, to do that which by exercising due diligence could or should have been done earlier, or the negligence or omission to assert a right within a reasonable time, warrants a presumption that the party entitled to assert it either has abandoned it or declined to assert it.[8]

Given Our foregoing discussion, there is no more necessity to rule on the second assignment of error.

WHEREFORE, premises considered, the instant appeal is DENIED for lack of merit.

SO ORDERED.

Gaerlan,[*] and Sempio Diy,**] JJ., concur.

[*] Vice Justice Marlene Gonzales-Sison per Office Order No. 450-14-ABR dated October 29, 2014.

**] Vice Justice Edwin D. Sorongon per Office Order No. 444-14-ABR dated October 27, 2014.

[1] Rollo, pp. 10-23.

[2] Rollo, pp. 38-39.

[3] Herminia Cando vs. Spouses Aurora Olazo and Claudio Olazo, G.R. No. 160741, 22 March 2007; Nuñez, et al., vs. GSIS Family Bank, et al., G.R. No. 163988, November 17, 2005; Spouses Oca vs. Court of Appeals, et al., G.R. No. L-84841 October 30, 1992.

[4] Tambunting, Jr. vs. Sumabat, G.R. No. 144101, 16 September 2005, 470 SCRA 92, 97.

[5] Id.

[6] Article 1155 of the Civil Code.

[7] Tolentino Arturo M., Civil Code of the Philippines, Volume IV, p. 49.

[8] Spouses Benjamin and Norma Garcia vs. Ester Garcia, et al., G.R. No. 169157, 14 November 2011.

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