

PHILIPPINE NATIONAL BANK, PLAINTIFF-APPELLEE, VS. MANILA INVESTMENT & CONSTRUCTION, INC. AND CIPRIANO S. ALLAS, DEFENDANTS-APPELLANTS.

G.R. No. L-27132. April 29, 1971

Ponente: DIZON, J.

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DIZON, J.:

In Civil Case No. 33074 of the Court of First Instance of Manila, Branch XV entitled "Philippine National Bank vs. Manila Investment & Construction, Inc., et al.," decision was rendered on December 26, 1957, its dispositive portion being partly as follows:

"IN VIEW WHEREOF, judgment is rendered condemning defendants, jointly and severally, to pay plaintiff:

- (1) Under the first cause of action the sum of P88,939.48 with daily interest of P12,77385 plus 1/4% commission or P194.6689 for every 30 days or a fraction thereof, plus 10% on the principal as attorney's fees and the cost;
- (2) On the second cause of action the sum of P356,913.01, plus P48.46403 and 1/4% or P629.31 for every 30 days or fraction thereof that the amount remain outstanding and unpaid plus 10% of the principal as attorney's fees, and the cost."

In case of non-payment of the amounts adjudged, the decision also provided for the sale at public auction of the personal properties covered by the chattel mortgage executed by the defendants in favor of the plaintiff Bank, and for the disposition of the proceeds in accordance with law.

After the decision had become executory, instead of having the mortgaged personal properties sold at public auction, the parties agreed to have them sold, and were in fact sold, at a private sale. The net proceeds obtained therefrom amounting to P256,941.70 were applied to the partial satisfaction of the above judgment.

On August 11, 1964, that is, more than five years but less than ten years from the date when the decision aforesaid became executory, the Philippine National Bank filed in the same Court of First Instance of Manila an action to revive it. On October 21, 1964, the defendants filed their answer in which, after admitting some of the allegations of the complaint and denying others, they interposed the following affirmative defenses:

- "1. That sometime after the judgment rendered by the Court of First Instance of Manila in Civil Case No. 33074 became final and executory, plaintiff sold to various parties in a private sale the mortgaged properties specifically mentioned in the judgment to be foreclosed and sold at public auction hence the proceeds thereof must therefore be accounted by plaintiff to the defendants in order that the same be properly and accordingly applied to the judgment;
2. That notwithstanding the aforesaid sale which was effected sometime in 1958, plaintiff never rendered an accounting of the proceeds of the sale of the mortgaged properties to the defendants;
3. That plaintiff has no cause of action in reviving the aforesaid judgment not until it has rendered proper

accounting, to the defendants of the proceeds of the aforesaid sale."

Thereafter, the parties submitted a stipulation of facts, paragraph 3 thereof being of the following tenor:

"3. - That as of August 11, 1964, there remains the sum of P382,338.47 still unsatisfied which is arrived at in the manner specified in Annex "A"."

After the parties had submitted their respective memorandum, the court rendered on August 30, 1966 the appealed decision whose dispositive portion reads as follows:

"WHEREFORE, the Court renders judgment ordering the defendants to pay the plaintiff, jointly and severally, the amount of THREE HUNDRED EIGHTY TWO THOUSAND THREE HUNDRED THIRTY EIGHT AND 47/100 (P382,338.47) PESOS, with interest at the legal rate from August 12, 1964 until fully paid. Costs against the defendants."

The defendants appealed to secure a reversal of the above decision claiming firstly, that the action instituted below is not the proper remedy; secondly, that the private sale of the mortgaged personal properties was null and void, and lastly, that the appellee is not entitled to a deficiency judgment.

We are of the opinion that, upon the facts of the case and the law thereto applicable, appellants' contentions are without merit.

In relation to the first, it is true that the decision rendered in Civil Case 33074 of the Court of First Instance of Manila provided for the sale at public auction of the personal properties covered by the chattel mortgage executed in favor of the Bank, but it is likewise true that said personal properties were sold at a private sale by agreement between the parties. Besides, We see nothing illegal, immoral or against public order in such agreement entered into freely and voluntarily. In line with the provisions of the substantive law giving the contracting parties full freedom to contract provided their agreement is not contrary to law, morals, good customs, public order or public policy (Article 1306, Civil Code of the Philippines), We held in *Philippine National Bank vs. De Poli* thus:

"Under article 1255 of the Civil Code (Art. 1306 New Civil Code), the contracting parties may stipulate that in case of violation of the conditions of the mortgage contract, the creditor may sell, at private sale and without previous advertisement or notice, the whole or part of the good mortgaged for the purpose of applying the proceeds thereof on the payment of the debt. Said stipulation is not contrary to law or public order, and therefore it is valid. (Italics supplied)."

As the disposition of the mortgaged personalties in a private sale was by agreement between the parties, it is clear that appellants are now in estoppel to question it except on the ground of fraud or duress - pleas that they do not invoke. They do not even claim that the private sale agreed upon had caused them substantial prejudice.

Appellants contend likewise that, instead of the action to revive the judgment rendered in its favor, the appellee Bank should have filed a motion in Civil Case 33074 of the Court of First Instance of Manila for the rendition of a deficiency judgment. It is to be borne in mind, in this connection, that the action for revival was instituted after the lapse of five but of less than ten years from the time the decision sought to be revived became executory. Having thus become stale or dormant, it was not subject to execution by mere motion. Consequently, before the judgment creditor could move for the rendition of a deficiency judgment and for the issuance of the corresponding writ of execution, it had to seek the revival of the decision in accordance with law. In *Bank, etc. vs. Greene* 61 Phil. 654, We held that "A judgment foreclosing a mortgage which has lost executory force by the lapse of five years may be revived by filing a complaint based thereon." This, precisely, is what the appellee Bank did.

Technically, the original judgment rendered by the Court of First Instance of Manila in Civil Case No. 33074 should have been literally revived, but the record shows that at the hearing of the action below the parties formally

stipulated that the unpaid portion of the amount due under the decision in favor of the Bank was the sum of P382,338.47 only, after taking into account all the payments made by the judgment debtors up to the date the stipulation of facts was submitted to the lower court. Consequently, the deficiency judgment that may be rendered in Civil Case No. 33074 and the writ of execution that may be issued to enforce the same shall be only for said amount.

Lastly, it is appellants' contention that the appellee Bank is not entitled to a deficiency judgment, invoking the provisions of Article 2115 of the new Civil Code. The issue thus raised was already resolved in the negative in *Ablaza vs. Ignacio*, G.R. No. L-11466 promulgated on March 23, 1958 where We said, *inter alia*, the following:

"We are of the opinion that the trial court is in error. It is clear from Article 2141 that the provisions of the New Civil Code on pledge shall apply to a chattel Mortgage only in so far as they are not counter to any provision of the Chattel Mortgage Law, otherwise the provisions of the latter shall apply. Here we find that the provisions of the Chattel Mortgage with regard to the effects of the foreclosure of a chattel mortgage are precisely contrary to the provisions of Article 2115 which were applied by the trial Court."

x x x

"Mr. Justice Kent, in the 12th Edition of his Commentaries, as well as other authors in the question of chattel mortgages, have said, that in case of a sale under a foreclosure of a chattel mortgage, there is no question that the mortgagee or creditor may maintain an action for the deficiency, if any should occur. And the fact that Act No. 1508 permits a private sale, such sale is not in fact, a satisfaction of the debt, to any greater extent than the value of the property at the time of the sale. The amount received at the time of the sale, of course, always requiring good faith and honesty in the sale, is only a payment, *pro tanto*, and an action may be maintained for a deficiency in the debt." (*Manila Trading and Supply Co., vs. Tamaraw Plantation Co.*, 47 Phil. 513; *Italics supplied.*)"

It is clear, therefore, that the proceeds of the sale of the mortgaged personal properties of the herein appellants constitute only a *pro tanto* satisfaction of the monetary award made by the court and the appellee Bank is entitled to collect the balance.

WHEREFORE, the decision appealed from is hereby affirmed, with costs.

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

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