DEVELOPMENT BANK OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS. SPOUSES LORENZO YU AND VENGIE YU, DEFENDANTS-APPELLEES.

Ponente: LOPEZ, J.

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LOPEZ, J.:

Plaintiff-appellant Development Bank of the Philippines appeals the Order[1] of the Regional Trial Court, Branch 28 of Catbalogan, Samar rendered on September 12, 2007 in Civil Case No. 7456 for Deficiency Claim granting the Motion for Reconsideration filed by defendants-appellees thereby reversing and setting aside its Decision ordering the payment of the deficiency in the amount of P757,026.69 in its favor. The decretal portion of the assailed Order reads;

> "WHEREFORE, premises considered, after careful scrutiny of the issues raised by the defendants, the instant motion being meritorious, this court is finally convinced that the order, dated May 31, 2007 is hereby ordered reconsidered and set aside and thus the plaintiff is not entitled to any deficiency claim.
>
> SO ORDERED."[2]

ANTECEDENT FACTS

Plaintiff Development Bank of the Philippines (DBP) is a government banking and financial corporation organized and existing in the Philippines pursuant to the provisions of Executive Order No. 81 with principal office at DBP Building, Makati City. It has a branch office at San Bartolome Street, Catbalogan, Samar.

Sometime in July 1997, defendants spouses Lorenzo and Vengie Yu applied for a loan at plaintiff bank DBP. They were then granted the same in the total amount of Nine Hundred Thousand Pesos (PhP900,000.00) as evidenced by Promissory Notes dated July 30, 1997[3], August 14, 1997[4] and August 21, 1997[5] and secured by a Real Estate Mortgage[6] involving Lot No. 1771 with improvements thereon, containing an area of eighty-eight (88) square meters covered by Transfer Certificate of Title No. T-10357.[7]

Defendants spouses failed to pay their loan which reached an amount of One Million Four Hundred Fifty Seven Thousand Twenty Six and 69/100 (PhP1,457,026.69) including interests and penalties. Consequently, plaintiff bank applied for the foreclosure of the real estate mortgage securing the loan on June 21, 1999.

The scheduled public auction sale of the aforesaid property was on September 15, 1999 from 9:00 in the morning to 2:00 in the afternoon. Mila Jardeleza, being the lone bidder, won the auction sale and the property was sold to her by Sheriff IV Lorenzo de Guzman in the amount of Seven Hundred Thousand Pesos (PhP700,000.00) as evidenced by a Sheriff's Certificate of Sale[8] dated September 17, 1999.

After deducting the proceeds of the auction sale to defendants' loan obligation, there resulted a deficiency of Seven Hundred Fifty Seven Thousand Twenty Six and 69/100 Pesos (PhP 757, 026.69). Accordingly, plaintiff bank demanded payment for such deficiency. However, Spouses Yu persistently refused to pay. Thus, the filing of a Deficiency Claim[9] by plaintiff bank on August 13, 2003.

Defendants spouses, in their Answer[10], claimed that the Complaint should be dismissed on the ground of estoppel by laches. Plaintiff bank has allegedly filed a Complaint for Annulment of Foreclosure, Public Auction Sale, etc. before the court a quo docketed as Civil Case No. 7153 but was dismissed[11] on September 5, 2001. In the said case, the trial court ruled that plaintiff bank could not be granted of its plea to nullify the foreclosure proceeding as it was conducted in its regular course and in conformity with the rules. It was the failure of the bank representative to arrive at the venue of the auction sale on time which caused them to forfeit its right to take part in the proceeding. The representative only arrived at 3:40 in the afternoon – one (1) hour and forty (40) minutes after the schedule of the auction has expired. With such fault, they could not assail the validity of the foreclosure proceeding. Plaintiff bank then appealed[12] the ruling to this Court, but withdrew[13] it on October 8, 2002. Such withdrawal of the appeal resulted to the finality of the decision of the trial court.

Another instance of plaintiff bank's acts of estoppel was when it failed to participate during the public auction and when it fell short in submitting its bid on the scheduled time and date despite prior notice. Such acts of negligence on the part of plaintiff bank allegedly constitute a waiver of its right to recover any deficiency from the proceeds of the auction. Hence, defendants spouses pleaded for the dismissal of the Complaint.

On May 31, 2007, the trial court ruled[14] in favor of the plaintiff bank and ordered defendants spouses to pay the bank the amount of PhP757,026.69 exclusive of accrued interest and other charges; and attorney's fees. The court a quo declared that the subject property was given merely as a security of the debt, not as its payment in case of default. The contract between the parties did not expressly or impliedly contain a provision which precludes the mortgagee from recovering the deficiency claim of the principal obligation.

A motion for reconsideration[15] was filed by herein defendants spouses which was granted[16] by the court a quo ruling that there was no settled doctrine that the plaintiff bank could be awarded of the deficiency claim if the latter failed to participate in the auction sale.

Aggrieved, plaintiff-appellant DBP files the instant appeal declaring that the trial court seriously erred in reconsidering its Decision in granting herein plaintiff-appellant its deficiency claim on the basis of the following grounds, to wit:

> I.
> THAT THE WITHDRAWAL OF THE APPEAL BY PLAINTIFF-APPELLANT IN THE OTHER CASE AGAINST DEFENDANTS-APPELLEES (CIVIL CASE 7153 FOR ANNULMENT OF AUCTION SALE) CONSTITUTES A WAIVER OF ITS RIGHT TO QUESTION THE VALIDITY OF THE FORECLOSURE PROCEEDINGS. AND, AS A CONSEQUENCE, THE PLAINTIFF-APPELLANT CANNOT BE GIVEN ANY ADVANTAGE MUCH LESS PROTECTION IN THE EYES OF THE LAW. HENCE, IT CAN NO LONGER FILE AN ACTION FOR DEFICIENCY CLAIM. IN EFFECT, THE WITHDRAWAL OF THE APPEAL BEFORE THE COURT OF APPEALS WAS AN ADMISSION OF ITS REGULARITY, HENCE, IT CAN NO LONGER BE QUESTIONED.
>
> II.
> THERE IS NO JURISPRUDENCE OR LAW GRANTING CREDITORS WHO DID NOT PARTICIPATE IN THE AUCTION SALE THE RIGHT TO FILE DEFICIENCY CLAIM.
>
> III.
> FAILURE OF THE PLAINTIFF-APPELLANT TO PARTICIPATE IN THE PUBLIC AUCTION SALE COULD DIRECTLY OR INDIRECTLY LOWER THE BIDDING PRICE TO THE DISADVANTAGE OF THE DEFENDANTS-APPELLEES IF AND WHEN THE DEFICIENCY CLAIM IS ALLOWED IN FAVOR OF THE PLAINTIFF.
>
> IV.

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> THE AWARD OF DAMAGES WAS WITHOUT ANY BASIS – THE PLAINTIFF-APPELLANT DID NOT SHOW PROOF OR EVIDENCE THAT IT IS ENTITLED TO THE DAMAGES AWARDED.[17]

OUR RULING

We grant the appeal.

Plaintiff-appellant DBP contends that while it is true that it may no longer pursue with the issue on the validity of the foreclosure proceedings as it has already become final, this could not be interpreted to mean that they already waived their right to file a deficiency claim on the difference of the amount due from the proceeds of the auction sale.

Also, inasmuch as the trial court may be correct in holding that there was no rule, law or Supreme Court Decision holding that a creditor ought to be awarded of the deficiency claim if the latter did not participate in the public auction, plaintiff-appellant insists that, just the same, there was no rule, law or jurisprudence prohibiting a creditor from filing a deficiency claim in an extrajudicial proceeding. In fact, Section 5 of Act 3135 does not oblige the creditor to participate in the bidding. The law is permissive rather than compulsory. All creditors – whether they participate in a public auction or not – therefore, has the right to file Deficiency claim. Hence, the trial court allegedly erred in reconsidering its Decision thereby prohibiting plaintiff-appellant from being awarded of the deficiency claim.

Basically, the primary issue for resolution is whether or not plaintiff-appellant DBP has the right to recover the deficiency of the outstanding obligation of defendants spouses Yu despite the extrajudicial foreclosure of the property mortgaged to secure the loan.

The appeal is meritorious.

Extrajudicial foreclosure is governed by Act No. 313518, as amended by Act No. 4118.[19] It provides in its Section 1 that:

> SECTION 1. When a sale is made under a special power inserted in or attached to any real-estate mortgage hereafter made as security for the payment of money or the fulfillment of any other obligation, the provisions of the following election shall govern as to the manner in which the sale and redemption shall be effected, whether or not provision for the same is made in the power.

In brief, Act No. 3135 recognizes the right of a creditor to foreclose a mortgage upon the mortgagor’s failure to pay his/her obligation. In choosing this remedy, the creditor enforces his lien through the sale on foreclosure of the mortgaged property. The proceeds of the sale will then be applied to the satisfaction of the debt. In case of a deficiency, the mortgagee has the right to recover the deficiency resulting from the difference between the amount obtained in the sale at public auction, and the outstanding obligation at the time of the foreclosure proceedings.[20]

In a number of cases, the Supreme Court held that where the proceeds of the sale are insufficient to cover the debt in an extrajudicial foreclosure of mortgage, the mortgagee is entitled to claim the deficiency from the debtor. While Act No. 3135, as amended, does not discuss the mortgagee’s right to recover the deficiency, neither does it contain any provision expressly or impliedly prohibiting recovery. If the legislature had intended to deny the creditor the right to sue for any deficiency resulting from the foreclosure of a security given to guarantee an obligation, the law would expressly so provide. Absent such a provision in Act. No. 3135, as amended, the creditor is not precluded from taking action to recover any unpaid balance on the principal obligation simply because he chose to extrajudicially foreclose the real estate mortgage.[21]

Prescinding from the above doctrinal pronouncements, it is thus clear that plaintiff-appellant DBP has the right to

recover the deficiency of PhP757,026.69 from defendants spouses Yu as the proceeds of the auction sale of the mortgaged property amounting to only Seven Hundred Thousand Pesos (PhP700,000.00) was manifestly not sufficient for the payment of their outstanding obligation in the amount of PhP1,457,026.69.

As gleaned from the foregoing, no condition or prohibition was set by law for a creditor to be entitled to file a claim for the deficiency resulting from a foreclosure of a mortgaged property to guarantee a loan. Nowhere in the above-cited law or jurisprudential rulings did it specifically and imperatively require the mortgagee/creditor to participate in the public auction for the sale of the mortgaged property, and his non-participation in the said bidding would deny him the right to claim any deficiency. Hence, in the instant case, the bank representative's failure to participate in the auction sale held on September 15, 1999 or its withdrawal of the appeal in the Annulment of Foreclosure case before the Court of Appeals do not, in any way, deny it of its right to claim for the deficiency more so in the present case where the proceeds of the auction sale is significantly lower than the amount payable to it. In fine, the trial court significantly erred in granting the Motion for Reconsideration filed by defendants-appellees and denied plaintiff-appellant of its right to claim for the deficiency.

As the primary issue for resolution is already passed upon by this Court, We do not consider it necessary to discuss the other matters raised by plaintiff-appellant bank in its appeal.

WHEREFORE, premises considered, the appeal is GRANTED. The assailed Order of the Regional Trial Court, Branch 28 of Catbalogan, Samar dated September 12, 2007 in Civil Case No. 7456 for Deficiency Claim is hereby REVERSED and SET ASIDE. The trial court Decision dated May 31, 2007 is hereby REINSTATED.

SO ORDERED.

Delos Santos, E.L., Chairperson, and Lagura-Yap, M.B., JJ., concur.

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[1] Penned by Judge Sibanah E. Usman, Rollo, pp. 58-67; Record, pp. 186-195

[2] Id, p. 67

[3] Id, p. 7

[4] Id, p. 8

[5] Id, p. 9

[6] Id, p. 11

[7]

R E S O L U T I O N p. 10

[8] Id, pp. 32-33

[9] Complaint, Id, pp. 1-4

[10] Id, pp. 23-31

[11] Order dated September 5, 2001, Id, pp. 40-42

[12] Notice of Appeal, Id, p. 43

[13] Notice to Withdraw Appeal, Id, p.44

[14] Id, pp. 149-157

[15] Id, pp. 158-169

[16] Id, pp. 186-195

[17] Rollo, p. 45

[18] AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES

[19] Sycamore Ventures Corporation, et. al., vs. Metropolitan Bank and Trust Company, G.R. No. 173183, November 18, 2013

[20] Id

[21] Cuñada, et. al., vs. Hon. Drilon, et. al., G.R. No. 159118, June 28, 2004

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