

**DEVELOPMENT BANK OF THE PHILIPPINES, PLAINTIFF-APPELLEE,
VS. JOVENCIO A. ZARAGOZA AND AVELINA E. ZARAGOZA,
DEFENDANTS-APPELLANTS.**

G.R. No. L-23493. August 23, 1978

Ponente: ANTONIO, J.

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ANTONIO, J.:

This is an appeal from the judgment of the Court of First Instance of Manila in Civil Case No. 47325, sentencing defendants-appellants Jovencio A. Zaragoza and Avelina E. Zaragoza to pay jointly and severally plaintiff-appellee Development Bank of the Philippines the sum of P7,779.36, with interest thereon at a legal rate from July 10, 1957 until fully paid, plus the sum equivalent to 10% of the amount due as attorney's fees and costs of the suit.

The issues raised in this appeal are: (a) whether or not the mortgagee is entitled to claim the deficiency in extrajudicial foreclosure of mortgage; and (b) whether or not additional interests are properly chargeable on the balance of the indebtedness during the period from notice of sale to actual sale.

The following facts are not disputed: Appellants obtained, on July 19, 1949, a loan of P30,000 from the appellee which was secured by a real estate mortgage. It was stipulated that upon failure of appellants to pay the amortization due, according to the terms and conditions thereof, appellee shall have the authority to foreclose extrajudicially the mortgaged property, pursuant to Republic Act No. 3135, as amended. Conformably to this stipulation, upon breach of the conditions of the mortgage, appellee foreclosed extrajudicially the mortgage on December 10, 1952, and the Provincial Sheriff of Pangasinan posted the requisite notice of the sale at public auction of the mortgaged property.

On June 10, 1957, the property was sold at public auction to the appellee, being the highest bidder therein, for the sum of P21,035.00. After applying the proceeds of the sale to satisfy the outstanding balance of the indebtedness in the amount of P28,914.36, it was found that appellants still owed the appellee in the amount of P7,779.36. Suit for the deficiency with preliminary attachment was filed by appellee against appellants on June 20, 1961. In their answer, appellants averred that after an extrajudicial foreclosure of property, no deficiency judgment would lie and that from the date of the foreclosure to the sale of said property, the mortgagor is no longer liable for the interest on the loan. The aforesaid contentions of appellants were overruled by the trial court, who thereupon rendered the aforesaid judgment in favor of the appellee. Contending that the trial court erred in resolving those issues of law, appellants appealed directly to this Court.

We find the appeal without merit.

The first issue had already been resolved in an earlier case. Thus, in *Philippine Bank of Commerce v. Tomas de Vera*,^[1] this Court ruled that in extrajudicial foreclosure of mortgage, where the proceeds of the sale is insufficient to cover the debt, the mortgagee is entitled to claim the deficiency from the debtor. Explaining the reasons for this rule, the Court stated:

"The sole issue to be resolved in this case is whether the trial court acted correctly in holding appellee Bank entitled to recover from appellant the sum of P99,033.20 as deficiency arising after the extrajudicial foreclosure, under Act No. 3135, as amended, of the mortgaged properties in question. It is urged, on appellant's part, that since Act No. 3135, as amended, is silent as to the mortgagee's right to recover deficiency arising after an extrajudicial foreclosure sale of mortgage, he (mortgagee) may not recover the same.

"A reading of the provisions of Act No. 3135, as amended (re extrajudicial foreclosure) discuss nothing, it is true, as to the mortgagee's right to recover such deficiency. But neither do we find any provision thereunder which expressly or impliedly prohibits such recovery.

"Article 2131 of the new Civil Code, on the contrary, expressly provides that 'The form, extent and consequences of a mortgage, both as to its constitution, modification and extinguishment, and as to other matters not included in this Chapter, shall be governed by the provisions of the Mortgage Law and of the Land Registration Law.' Under the Mortgage Law, which is still in force, the mortgagee has the right to claim for the deficiency resulting from the price obtained is the sale of the real property at public auction and the outstanding obligation at the time of the foreclosure proceedings. (See Soriano v. Enriquez, 24 Phil. 584; Banco de Islas Filipinas v. Concepcion e Hijos, 53 Phil. 86; Banco Nacional v. Barreto, 53 Phil. 101). Under the Rules of Court (Sec. 6, Rule 70), 'Upon the sale of any real property, under an order for a sale to satisfy a mortgage or other incumbrance thereon, if there be a balance due to the plaintiff after applying the proceeds of the sale, the court, upon motion, should render a judgment against the defendant for any such balance for which, by the record of the case, he may be personally liable to the plaintiff, x x x.' It is true that this refers to a judicial foreclosure, but the underlying principle is the same, that the mortgage is but a security and not a satisfaction of indebtedness.

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"Let it be noted that when the legislature intends to foreclose the right of a creditor to sue for any deficiency resulting from the foreclosure of the security given to guarantee the obligation, it so expressly provides. Thus, in respect to pledges, Article 2115 of the new Civil Code expressly states: 'x x x. If the price of the sale is less (than the amount of the principal obligation) neither shall the creditor be entitled to recover the deficiency, notwithstanding any stipulation to the contrary.' Likewise, in the event of a foreclosure of a chattel mortgage on the thing sold in installments 'he (the vendor) shall have no further action against the purchaser to recover any unpaid balance of the price. Any agreement to the contrary shall be void.' (Article 1484, paragraph 3, *ibid.*). It is then clear that in the absence of a similar provision in Act No. 3135, as amended, it can not be concluded that the creditor loses his right given him under the Mortgage Law and recognized in the Rules of Court, to take action for the recovery of any unpaid balance on the principal obligation, simply because he has chosen to foreclose his mortgage extrajudicially pursuant to a special power of attorney given him by the mortgagor in the mortgage contract. As stated by this Court in *Medina v. Philippine National Bank* (56 Phil. 651), a case analogous to the one at bar, the step taken by the mortgagee-bank in resorting to extrajudicial foreclosure under Act 3135, was merely to find a proceeding for the sale, and its action can not be taken to mean a waiver of its right to demand the payment of the whole debt.'" (pp. 1028-1030).

This rule was reiterated in *Development Bank of the Philippines v. Vda. de Moll*.^[2]

In connection with the second issue, appellants argue that since the appellee held in abeyance the sale of the property for a period of four (4) years, they alone should suffer the consequences of such delay. It was further

contended that the debtor's liability in judicial foreclosures is limited to the amount due at the time of the foreclosure and, therefore, such should also apply to extrajudicial foreclosures. By way of refutation, appellee explained that the seemingly long interval between the date of issuance of the Sheriff's Notice of Sale and the date of sale was due to the numerous transfers made of the date of the sale upon requests of the appellants themselves. Each transfer is covered by a corresponding agreement for postponement, executed jointly by appellants and appellee. Certainly, under such circumstances, appellants cannot take advantage of the delay which was their own making, to the prejudice of the other party. Apart from this consideration, it must be noted that a foreclosure of mortgage means the termination of all rights of the mortgagor in the property covered by the mortgage. It denotes the procedure adopted by the mortgagee to terminate the rights of the mortgagor on the property and includes the sale itself. In judicial foreclosures, the "foreclosure" is not complete until the Sheriff's Certificate is executed, acknowledged and recorded. In the absence of a Certificate of Sale, no title passes by the foreclosure proceedings to the vendee.[3] It is only when the foreclosure proceedings are completed and the mortgaged property sold to the purchaser that all interests of the mortgagor are cut off from the property. This principle is applicable to extrajudicial foreclosures. Consequently, in the case at bar, prior to the completion of the foreclosure, the mortgagor is, therefore, liable for the interest on the mortgage.[4]

ACCORDINGLY, the judgment appealed from is hereby AFFIRMED. Costs against appellants.

Fernando, (Chairman), Barredo, Aquino, Concepcion, Jr., and Santos, JJ., concur.

[1] L-18816, December 29, 1962, 6 SCRA 1026.

[2] L-25802, January 31, 1972, 43 SCRA 82.

[3] Lindgreen v. Lindgreen, 75 NW 1034, 1036, 73 Minn. 90; Larocque v. Chapel, 65 NW 941, 942, 63 Minn. 517; Gold-tree v. McAlister, 23 Pac. 207, 210.

[4] See also Ocampo v. Domalanta, L-21011, August 30, 1967.

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