

**GOVERNMENT SERVICE INSURANCE SYSTEM, PETITIONER, VS.
COURT OF APPEALS AND MR. & MRS ISABELO R. RACHO,
RESPONDENTS.***G.R. No. L-40824. February 23, 1989*

Ponente: REGALADO, J.

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Private respondents, Mr. and Mrs. Isabelo R. Racho, together with the spouses Mr. and Mrs. Flaviano Lagasca, executed a deed of mortgage, dated November 13, 1957, in favor of petitioner Government Service Insurance System (hereinafter referred to as GSIS) and, subsequently, another deed of mortgage, dated April 14, 1958, in connection with two loans granted by the latter in the sums of P11,500.00 and P3,00.00, respectively.[1] A parcel of land covered by Transfer Certificate of Title No. 38989 of the Register of Deeds of Quezon City, co-owned by said mortgagor spouses, was given as security under the aforesaid two deeds.[2] They also executed a “promissory note” which states in part:

“x x x for value received, we the undersigned . . . JOINTLY, SEVERALLY and SOLIDARILY, promise to pay the GOVERNMENT SERVICE INSURANCE SYSTEM the sum of . . . (P11,500.00) Philippine Currency, with interest at the rate of six (6%) per centum compounded monthly, payable in . . . (120) equal monthly installments of . . . (P127.65) each.”[3]

On July 11, 1961, the Lagasca spouses executed an instrument denominated “Assumption of Mortgage” under which they obligated themselves to assume the aforesaid obligation to the GSIS and to secure the release of the mortgage covering that portion of the land belonging to herein private respondents and which was mortgage to the GSIS.[4] This undertaking was not fulfilled.[5]

Upon failure of the mortgagors to comply with the conditions of the mortgage, particularly the payment of the amortizations due, GSIS extrajudicially foreclosed the mortgage and caused the mortgaged property to be sold at public auction on December 3, 1962.[6]

More than two years thereafter, or on August 23, 1965, herein private respondents filed a complaint against the petitioner and the Lagasca spouses in the former Court of First Instance of Quezon City,[7] praying that the extra judicial foreclosure “made on their property and all other documents executed in relation thereto in favor of the Government Service Insurance System” be declared null and void. It was further prayed that they be allowed to recover said property, and/or the GSIS be ordered to pay them the value thereof, and/or they be allowed to repurchase the land. Additionally, they asked for actual and moral damages and attorney’s fees.

In their aforesaid complaint, private respondents alleged that they signed the mortgage contracts not as sureties or guarantors for the Lagasca spouses but they merely gave their common property to the said co-owners who were solely benefited by the loans from the GSIS.

The trial court rendered judgment on February 25, 1968 dismissing the complaint for failure to establish a cause

of action.[8]

Said decision was reversed by the respondent Court of Appeals[9] which held that:

“x x x although formally they are co-mortgagors, they are so only for accommodation (sic) in that the GSIS required their consent to the mortgage of the entire parcel of land which was covered with only one certificate of title, with full knowledge that the loans secured thereby were solely for the benefit of the appellant (sic) spouses who alone applied for the loan.”

x x x

“It is, therefore, clear that as against the GSIS, appellants have a valid cause for having foreclosed the mortgage without having given sufficient notice to them as required either as to their delinquency in the payment of amortization or as to the subsequent foreclosure of the mortgage by reason of any default in such payment. The notice published in the newspaper, ‘Daily Record’ (Exh. 12) and posted pursuant to Sec. 3 of Act 3135 is not the motion to which the mortgagor is entitled upon the application being made for an extrajudicial foreclosure. x x x”[10]

On the foregoing findings, the respondent court consequently decreed that-

“In view of all the foregoing, the judgment appealed from is hereby reversed, and another one entered (1) declaring the foreclosure of the mortgage void insofar as it affects the share of the appellants; (2) directing the GSIS to reconvey to appellants their share of the mortgaged property, or the value thereof if already sold to third party, in the sum of P35,000.00, and (3) ordering the appellees Flaviano Lagasca and Esther Lagasca to pay the appellants the sum of P10,000.00 as moral damages, P5,000.00 as attorney’s fees, and costs.”[11]

The case is now before Us in this petition for review.

In submitting their case to this Court, both parties relied on the provisions of section 29 of Act No. 2031, otherwise known as the Negotiable Instruments Law, which provide that an accommodation party is one who has signed an instrument as maker, drawer, acceptor or indorser without receiving value therefore, but is held liable on the instrument to a holder for value although the latter knew him to be only an accommodation party.

This approach of both parties appears to be misdirected and their reliance misplaced. The promissory note hereinbefore quoted, as well as the mortgage deeds subject of this case, are clearly not negotiable instruments. These documents do not comply with fourth requisite to be considered as such under Section 1 of Act No. 2031 because they are neither payable to order nor to bearer. The note is payable to a specified party, the GSIS. Absent the aforesaid requisite, the provisions of Act No. 2031 would not apply; governance shall be afforded, instead, by the provisions of the Civil Code and special Laws on mortgages.

As earlier indicated, the factual findings of respondent court are that private respondents signed the documents “only to give their consent to the mortgage as required by GSIS”, with the latter having full knowledge that the loans secured thereby were solely for the benefit of the Lagasca spouses.[12] This appears to be duly supported by sufficient evidence of record. Indeed, it would be unusual for the GSIS to arrange for and deduct the monthly amortizations on the loans from the salary as an army officer of Flaviano Lagasca without likewise affecting deductions from the salary of Isabelo Racho who was also an army sergeant. Then there is also the undisputed fact, as already stated, that the Lagasca spouses executed a so-called “Assumption of Mortgage” promising to exclude private respondents and their share of the mortgage property from liability to the mortgagee. There is no intimation that the former executed such instrument for a consideration, thus confirming that they did so pursuant to their original agreement.

The parol evidence rule[13] cannot be used by petitioner as a shield in this case for it is clear that there was no

objection in the court below regarding the admissibility of the testimony and documents that were presented to prove that the private respondents signed the mortgage papers just to accommodate their co-owners, the Lagasca spouses. Besides, the introduction of such evidence falls under the exception to said rule, there being allegations in the complaint of private respondents in the court below regarding the failure of the mortgage contracts to express the true agreement of the parties.[14]

However, contrary to the holding of the respondent court, it cannot be said that private respondents are without liability under the aforesaid mortgage contracts. The factual context of this case is precisely what is contemplated in the last paragraph of Article 2085 of the Civil Code to the effect that third persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property.

So long as valid consent was given, the fact that the loans were solely for the benefit of the Lagasca spouses would not invalidate the mortgage with respect to private respondents' share in the property. In consenting thereto, even assuming that private respondents may not be assuming personal liability for the debt, their share in the property shall nevertheless secure and respond for the performance of the principal obligation. The parties to the mortgage could have intended that the same would apply only to the aliquot portion of the Lagasca spouses in the property, otherwise the consent of the private respondents would not have been required.

The supposed requirement of prior demand on the private respondents would not be in point here since the mortgage contracts created obligations with specific terms for the compliance thereof. The facts further shows that the private respondents expressly bound themselves as solidary debtors in promissory note hereinbefore quoted.

Coming now to the extrajudicial foreclosure effected by GSIS, We cannot agree with the ruling of respondent court that lack of notice to the private respondents of the extrajudicial foreclosure sale impairs the validity thereof. In *Bonnevie, et al. vs. Court Appeals, et al.*, [15] the Court ruled that Act No. 3135, as amended, does not require personal notice on the mortgagor, quoting the requirement on notice in such cases as follows:

“Section 3. Notice shall be given by posting notices of sale for not less than twenty days in at least three public places of the municipality where the property is situated, and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality of city.”

There is no showing that the foregoing requirement on notice was not complied with in the foreclosure sale complained of.

The respondent court, therefore, erred in annulling the mortgage insofar as it affected the share of private respondents or in directing reconveyance of their property or the payment of the value thereof. Indubitably, whether or not private respondents herein benefited from the loan, the mortgage and the extrajudicial foreclosure proceedings were valid.

WHEREFORE, judgment is hereby rendered REVERSING the decision of the respondent Court of Appeals and REINSTATING the decision of the court a quo in Civil Case No. Q-9418 thereof.

SO ORDERED.

Melencio-Herrera (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

[1] Record on Appeal, 9, 22; Rollo, 54.

[2] Rollo, 58.

[3] Ibid., 26.

[4] Record on Appeal, 27-31; Rollo, 54.

[5] Rollo, 59.

[6] Ibid., id.; Record on Appeal, 64.

[7] Branch IV, Civil Case No. Q-9418; Record on Appeal, 1-38; Rollo, 54.

[8] Record on Appeal, 69-73; *ibid.*

[9] CA-G. R. No. 42193-R; Justice Pacifico P. de Castro, ponente, Justices Luis B. Reyes and Ramon G. Gaviola, Jr., concurring.

[10] Rollo, 61-63.

[11] Ibid., 66.

[12] Ibid., 61.

[13] Sec. 7, Rule 130, Rules of Court.

[14] Record on Appeal, 3-4; Rollo, 54.

[15] 125 SCRA 122 (1983).

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