

**SPOUSES RAMON TARNATE AND ERLINDA TARNATE, PETITIONERS,
VS. HONORABLE COURT OF APPEALS, HON. JUDGE REGIONAL TRIAL
COURT BATANGAS AND IBAAN RURAL BANK, INC., RESPONDENTS.**

G.R. No. 100635. February 13, 1995

Ponente: VITUG, J.

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VITUG, J.:

This petition for review on certiorari disputes the decision, dated 20 March 1991, of the Court of Appeals, as well as its resolution of 26 June 1991 denying the motion for reconsideration of said decision, that has affirmed a summary judgment of the court a quo.

The facts, gathered from the questioned decision, may be summarized thusly:

In order to secure various loans obtained from the Ibaan Rural Bank, Inc., the spouses Ramon and Erlinda Tarnate, along with Vicente Templo and Manuel Villacorte, executed real estate mortgages over different parcels of land, each covered by a Transfer Certificate of Title ("TCT"), all situated in Mataas na Lupa, Lipa City.

When the loans were not repaid at maturity, the hypothecated parcels of land were extrajudicially foreclosed by the bank in accordance with Act No. 3135. At the auction, the bank gave the highest bids. The corresponding certificates of sale were issued in favor of the bank on 07 October 1981.

On 03 May 1982, the bank commenced an action to recover the remaining deficiency on the total indebtedness. It averred that while the loan secured by the mortgage on TCT No. T-37203 amounted to P99,190.97, the foreclosed property, however, was sold for just P46,512.00, thus leaving a balance of P52,678.97; that with regard to the loan of P146,429.38, secured by TCT No. 37204, the auction sale only brought in an amount of P46,440.00, similarly resulting in a deficiency of P99,989.38; that the obligation secured by TCT No. 37202 was for P96,259.16, but its foreclosure merely commanded an auction price of P42,156.00, or a deficit of P54,103.16; and that relative to the P136,304.63 loan, covered by a mortgage on TCT No. 37751, the winning bid price of P65,232.00 was likewise short by P71,072.63. In their answer, the defendants, questioned the validity of the extrajudicial foreclosure of the mortgaged parcels of land but, by and large, maintained that the complaint had been filed prematurely since the redemption period at the time had yet to expire.

A pre-trial conference was held. The bank was accorded a period of up to ten (10) days to formally submit its motion for summary judgment. The defendants were also given ten (10) days from receipt of said motion within which to present their opposition. On 13 October 1983, the bank filed a motion for summary judgment. On 17 November 1983, it manifested that counsel for the defendants was furnished, by registered mail, a copy of its motion but that the same was "returned unclaimed." The bank prayed that the defendants be deemed to have waived their right to oppose the motion. On 21 November 1983, the defendants sought to have their supplemental answer with counterclaim admitted, stating that during the pendency of the case, the bank applied for, and was granted, the consolidation of ownership over the foreclosed property. The bank filed a counter-manifestation and opposition. The court a quo set these incidents for hearing on 10 January 1984, but neither of the parties appeared.

The trial court forthwith considered the motion for summary judgment, as well as the pleadings relating thereto, submitted for resolution.

On 19 June 1986, the court a quo finally rendered judgment thusly:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff as follows:

"1. Under the first cause of action, ordering the defendants spouses Ramon Tarnate and Erlinda Tarnate to pay the plaintiff the sum of P52,678.97, with interest thereon at the legal rate per annum starting from October 7, 1981 until fully paid;

"2. Under the second cause of action, ordering the defendants Spouses Ramon Tarnate and Erlinda Tarnate to pay plaintiff the sum of P99,989.38 with legal rate of interest thereon from October 7, 1981 until fully paid;

"3. Under the third cause of action, ordering the defendants Spouses Ramon Tarnate and Erlinda Tarnate and Vicente Templo to pay, jointly and severally, the plaintiff the sum of P54,103.16 with legal rate of interest thereon per annum from October 7, 1981 until fully paid;

"4. Under the fourth cause of action, ordering the defendants Spouses Ramon Tarnate and Erlinda Tarnate and Manuel Villacorte to pay, jointly and severally, the plaintiff the sum of P71,072.63 with legal rate of interest thereon per annum from October 7, 1981 until fully paid;

"5. Under all the causes of action, ordering the defendants to pay, jointly and severally, the plaintiff attorney's fees in the amount equivalent to 10% of the sum due and payable; and

"6. The costs of suit.

"SO ORDERED." [1]

The defendants brought the case to Court of Appeals. On 20 March 1991, the appellate court affirmed the assailed decision of the court a quo and dismissed the appeal for lack of merit. The motion for reconsideration filed by the defendant-appellants was denied by the appellate court in its resolution of 26 June 1991.

In the instant recourse, the spouses Ramon and Erlinda Tarnate merely reiterated the claim that they had made before the appellate court to the effect that:

"1.

THE LOWER COURT ERRED IN NOT GIVING THE DEFENDANTS-APPELLANTS THE OPPORTUNITY TO FILE THEIR OPPOSITION TO MOTION FOR SUMMARY JUDGMENT.

"2.

THE LOWER COURT ERRED IN RENDERING JUDGMENT BASED ON THE PLEADINGS IN FAVOR OF THE PLAINTIFF-APPELLEE AND AGAINST DEFENDANTS-APPELLANTS.

"3.

THE LOWER COURT ERRED IN GRANTING THE MOTION FOR SUMMARY JUDGMENT.

"4.

THE LOWER COURT ERRED IN DENYING DEFENDANTS-APPELLANTS MOTION TO ADMIT SUPPLEMENTAL ANSWER WITH COUNTERCLAIM. [2]

The petition is bereft of merit.

Summary judgment is proper when, except with respect to the amount of damages, there is no veritable issue on any material fact, and the moving party is entitled to such summary judgment as a matter of course. [3] The appellate court clearly did not commit error in concluding that summary judgment could be had in the case at bench. Neither the existence of the loans and the mortgage deeds, nor the fact of default on the due repayments, is disputed. Concededly, the bank has had the unquestioned right to foreclose on the mortgages. It is a settled rule that a mortgagee may recover any deficiency in the mortgage account which is not realized in a foreclosure sale, [4] and that the action for recovery of that deficiency may be filed even during the redemption period. [5]

The contention that petitioners have been made to believe by respondent bank that the loans extended to them would be for long-term, not short-term, accommodations does not appear to indeed be a real genuine issue. The loan documents admittedly executed by the parties clearly contradict petitioners' asseverations. The parties must have realized that when the terms of an agreement are unequivocally reduced to writing, such as in this case, they hardly can be controverted by oral evidence to the contrary.

Petitioners decry their not having been given an opportunity to submit their opposition to the motion for summary judgment. This contention is simply not true.

The bank served on petitioners' counsel a copy, through registered mail, of its motion for summary judgment (albeit "returned unclaimed"). [6] Upon petitioners' manifestation of its failure to receive that copy, the court a quo set the motion, as well as the incidents that followed, for hearing. Since neither petitioners nor respondent bank appeared, the court considered the matter submitted for resolution. Four months having elapsed without the motion being yet resolved, respondent bank, on 18 May 1985, moved for an early resolution. Close to a year later, or on 15 April 1986, a second motion was filed to resolve the pending matter. On 30 April 1986, the motion for summary judgment was finally granted. During the interim, no further step was taken by herein petitioners. After an evaluation of the pleadings before it, the court a quo, rendered judgment, on 19 June 1986, in favor of the bank.

Anent the contention that the property has been sold at an extremely low price, suffice it to say that, if correct, it would have, in fact, favored an easy redemption of the property. [7] That remedy could have well been availed of but petitioners did not. Neither can the charge of irregularity in the foreclosure sale for lack of notice and publication be seriously considered. The records of the case immediately belie such a claim (Annexes "A," "B," "C" and "D," Motion for Summary Judgment, pp. 67-70, Records).

In their supplemental answer, petitioners have called attention to respondent bank's consolidation of ownership over the mortgaged property during the pendency of this case. We see nothing wrong in this action of the bank. Upon a failure to redeem a foreclosed realty, the consolidation of title becomes a matter of right on the part of the auction buyer.

The award of attorney's fees made by the court a quo has not been questioned in petitioners' appeal to the Court of Appeals. It is too late in the day to do it now.

WHEREFORE, the decision of the Court of Appeals is AFFIRMED in toto. Costs against petitioners.

SO ORDERED.

Feliciano, (Chairman), Romero, Melo, and Francisco, JJ., concur.

[1] Rollo , pp. 103-104.

[2] Rollo , pp. 8-9.

[3] "Sec. 3. Motion and proceedings thereon. - The motion shall be served at least ten (10) days before the time specified for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. After the hearing, the judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file together with the affidavits, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Rule 34, Revised Rules of Court.)

[4] State Investment House, Inc. vs. Court of Appeals, 217 SCRA 32; Bicol Savings & Loan Association vs. Guinhawa, 188 SCRA 642; Prudential Bank vs. Martinez, 189 SCRA 612; Development Bank of the Phil. vs. Zaragosa, 84 SCRA 668; Development Bank of the Phil. vs. Mirang, 66 SCRA 141.

[5] Development Bank of the Philippines vs. Vda. de Moll, 43 SCRA 82.

[6] "Sec 8. Completeness of service. - Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of five (5) days after mailing, unless the court otherwise provides. Service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect at the expiration of such time." (Rule 13, Rules of Court)

[7] See Prudential Bank vs. Martinez, 189 SCRA 612.

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