

THE ABACA CORPORATION OF THE PHILIPPINES REPRESENTED BY THE BOARD OF LIQUIDATORS, PETITIONER, VS. MARTIN O. GARCIA, AND THE COURT OF APPEALS, RESPONDENTS.

G.R. No. 118408. May 14, 1997

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

THE ABACA CORPORATION OF THE PHILIPPINES (ABACORP), in this petition for review on certiorari pursuant to Rule 45 of the Rules of Court, seeks the reversal of the Decision of respondent Court of Appeals in CA-G.R. No. CV-204104 promulgated 30 June 1994 as well as its Resolution of 19 December 1994 denying reconsideration thereof, and praying for the reinstatement of the Decision of the Regional Trial Court - Br. 10, Legaspi City, dated 29 November 1988 holding that -

Defendant ABACORP or the Board of Liquidators is allowed to proceed with foreclosure proceedings and auction sale of all the 26 parcels of plaintiff included in this case, based on the new balance which includes legal interests, newspaper publication and sheriff's fee.

Plaintiff is further ordered to reimburse defendant ABACORP, through the Board of Liquidators, the litigation expenses of P30,224.22 representing the travel expense of the different lawyers who came to Legaspi to attend to this case.[1]

The evidence shows that on 25 September 1961 private respondent Martin O. Garcia was granted a loan of P25,000.00 by ABACORP. To secure payment of his obligation Garcia executed a promissory note and a real estate mortgage[2] over his twenty-six (26) parcels of land in favor of ABACORP. Garcia defaulted in his payments hence ABACORP initiated extrajudicial foreclosure proceedings. The public auction however was suspended on several occasions upon request of Garcia. But, despite several accommodations, Garcia still failed to pay. Hence ABACORP initiated anew extrajudicial foreclosure and public auction sale wherein ABACORP emerged as the sole and winning bidder. Before a certificate of sale could be issued in favor of ABACORP, Garcia filed a complaint for Annulment of Sale with Injunction and Damages[3] with the Regional Trial Court of Legaspi City.

The Decision of the trial court not being satisfactory to respondent Garcia, he appealed to the Court of Appeals which reversed the court a quo -

1. Declaring null and void the auction sale of the subject properties on December 2, 1991 (should be 1971);
2. Ordering herein defendants to desist from further proceeding with the extrajudicial foreclosure and auction sale of all the twenty-six (26) parcels of land and particularly from issuing and registering the certificate of sale with the Register of Deeds of Albay in favor of defendant-appellee mortgagee ABACA CORPORATION OF THE PHILIPPINES.[4]

Contending that the Decision of the Court of Appeals is contrary to law, ABACORP now comes to us with these

assigned errors: (a) Respondent Court of Appeals seriously erred when it concluded in its questioned Decision that Sec. 21, Rule 39, of the Revised Rules of Court on execution sale is applicable in the present case; (b) Respondent Court of Appeals seriously erred when it set aside the sale due to alleged inadequacy of the bid price; and, (c) Having had the opportunity to correct the glaring error committed in its questioned Decision, respondent Court of Appeals seriously erred in denying petitioner's motion for reconsideration of 19 December 1994.[5]

We find merit in the petition. There are three (3) types of sales arising from failure to pay a mortgage debt, namely, the extrajudicial foreclosure sale, the judicial foreclosure sale and the ordinary execution sale. These in turn are governed by three (3) different laws. Act No. 3135 governs extrajudicial foreclosure sale, Rule 68 of the Rules of Court deals with judicial foreclosure sale, while Rule 39 covers ordinary execution sale. Act No. 3135 or An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgage applies to the case at bar.

In the Real Estate Mortgage executed by respondent Garcia on 25 October 1961 it was provided that Act No. 3135 was to be applied and ABACORP was particularly designated as attorney-in-fact. Thus -

That if at any time the mortgagor shall fail or refuse to pay the obligations herein secured, or to comply with any of the conditions and stipulations herein agreed, or shall during the time this mortgage is in force, institute insolvency proceedings or involuntarily declared insolvent, or shall use the proceeds of this loan for purposes other than those specified herein or if this mortgage cannot be recorded in the corresponding Registry of Deeds, then all the obligations of the mortgagor secured by this mortgage shall immediately become due, payable and defaulted and the mortgagee may immediately foreclose this mortgage judicially in accordance with the Rules of Court or extrajudicially in accordance with the Act No. 3135 as amended and under Act 2612 as amended.

That it is the essence of this contract that effective upon the breach of any condition of this mortgage and in addition to the remedies herein stipulated, the mortgagee is hereby likewise appointed Attorney-in-fact of the mortgagor with full powers and authority, with the use of force, if necessary, to take actual possession of the mortgaged property without the necessity of any judicial order or any permission or power, to collect rents, to eject tenants, to lease or sell the mortgaged property, or any part thereof, at a private sale without previous notice or advertisement of any kind and execute the corresponding bills of sale, lease or other agreement that may be deemed convenient and perform any other act which the mortgagee may deem convenient for the proper administration of the mortgaged property. [6]

It was therefore error on the part of respondent Court of Appeals to invoke Rule 39 which applies only to ordinary execution sale. If at all, Rule 39 applies to extrajudicial foreclosure sale but only on the manner of redemption and computation of interest. But the manner of redemption and computation of interest were never raised as issues in the case before us.

From the very beginning, it was clear that what was involved was an extrajudicial foreclosure sale. Rule 39 is a rule of procedure with general application, while Act No. 3135 is a specific legislative enactment particularly applicable to the present case.

A careful review of the records reveals no irregularity in the conduct of the extrajudicial foreclosure sale. That the entire property was sold was no error at all. Act No. 3135 does not require mortgaged properties to be sold by lot or only so much of the mortgaged property as to cover only the obligation. The levy requirement mentioned by private respondent is mandated by Rule 39 only and not by Act No. 3135. In *Fiestan v. Court of Appeals*,^[7] a case in point, we ruled -

Levy, as understood under Section 15, Rule 39 of the Rules of Court in relation to execution of money judgments, has been defined by this Court as the act whereby a sheriff sets apart or appropriates for the

purpose of satisfying the command of the writ, a part of the whole of the judgment-debtor's property.

In extrajudicial foreclosure of mortgage, the property sought to be foreclosed need not be identified or set apart by the sheriff from the whole mass of property of the mortgagor for the purpose of satisfying the mortgage indebtedness. For, the essence of a contract of mortgage indebtedness is that a property has been identified or set apart from the mass of the property of the debtor-mortgagor as security for the payment of money or the fulfillment of an obligation to answer the amount of indebtedness, in case of default of payment. By virtue of the special power inserted or attached to the mortgage contract, the mortgagor has authorized the mortgagee-creditor or any other person authorized to act for him to sell said property in accordance with the formalities required under Act No. 3135, as amended (underscoring supplied).

The gross inadequacy of price would neither nullify the sale. As we held in *Tiongco v. Philippine Veterans Bank*[8] -

While in ordinary sales for reason of equity a transaction may be invalidated on the ground of inadequacy of price, or when such inadequacy shocks one's conscience as to justify the courts to interfere, such does not follow when the law gives the owner the right to redeem as when a sale is made at public auction, upon the theory that the lesser the price the easier it is for the owner to effect redemption (underscoring supplied).

WHEREFORE, the decision of the Court of Appeals promulgated 30 June 1994 as well as its Resolution of 19 December 1994 denying reconsideration thereof is REVERSED and SET ASIDE. The Decision of the Regional Trial Court - Br. 10, Legaspi City, of 29 November 1988 allowing defendant Abaca Corporation of the Philippines (petitioner herein) or the Board of Liquidators to proceed with the foreclosure proceedings and the auction sale of all the twenty-six (26) parcels of land based on the new balance, and ordering plaintiff Martin O. Garcia (private respondent herein) to reimburse defendant ABACORP through the Board of Liquidators the litigation expenses of P30,224.22 is REINSTATED.

Costs against private respondent Martin O. Garcia.
SO ORDERED.

Padilla, (Chairman), Vitug, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Decision of the Regional Trial Court – Br. 10, Legaspi city, pp. 18-19; Rollo, pp. 71-72.

[2] Exh. "B," Folder of Exhibits.

[3] Docketed as Civil Case No. 4546 of the Regional Trial Court of Legaspi City.

[4] See Note 1, p. 11; Rollo, p. 39.

[5] Petition, p. 6; Rollo, p.14.

[6] See Note 2.

[7] G.R. No. 81552, 28 May 1990, 185 SCRA 751.

[8] G.R. No. 82782, 5 August 1992, 212 SCRA 176.

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