

PHILIPPINE NATIONAL BANK, PETITIONER, VS. HON. COURT OF APPEALS, ALLAN M. CHUA AS SPECIAL ADMINISTRATOR OF THE INTESTATE ESTATE OF THE LATE ANTONIO M. CHUA AND MRS. ASUNCION M. ...

G.R. No. 121597. June 29, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition assails the decision[1] of the Court of Appeals dated July 25, 1995 in CA-G.R. CV No. 36546, affirming the decision dated September 4, 1991 of the Regional Trial Court of Balayan, Batangas, Branch 10 in Civil Case No. 1988.

The facts, as found by the trial court and by the Court of Appeals, are not disputed.

The spouses Antonio M. Chua and Asuncion M. Chua were the owners of a parcel of land covered by Transfer Certificate of Title No. P-142 and registered in their names. Upon Antonio's death, the probate court appointed his son, private respondent Allan M. Chua, special administrator of Antonio's intestate estate. The court also authorized Allan to obtain a loan accommodation of five hundred fifty thousand (P550,000.00) pesos from petitioner Philippine National Bank to be secured by a real estate mortgage over the above-mentioned parcel of land.

On June 29, 1989, Allan obtained a loan of P450,000.00 from petitioner PNB evidenced by a promissory note, payable on June 29, 1990, with interest at 18.8 percent per annum. To secure the loan, Allan executed a deed of real estate mortgage on the aforesaid parcel of land.

On December 27, 1990, for failure to pay the loan in full, the bank extrajudicially foreclosed the real estate mortgage, through the Ex-Officio Sheriff, who conducted a public auction of the mortgaged property pursuant to the authority provided for in the deed of real estate mortgage. During the auction, PNB was the highest bidder with a bid price P306,360.00. Since PNB's total claim as of the date of the auction sale was P679,185.63, the loan had a payable balance of P372,825.63. To claim this deficiency, PNB instituted an action with the RTC, Balayan, Batangas, Branch 10, docketed as Civil Case No. 1988, against both Mrs. Asuncion M. Chua and Allan Chua in his capacity as special administrator of his father's intestate estate.

Despite summons duly served, private respondents did not answer the complaint. The trial court declared them in default and received evidence ex parte.

On September 4, 1991, the RTC rendered its decision, ordering the dismissal of PNB's complaint.[2]

On appeal, the Court of Appeals affirmed the RTC decision by dismissing PNB's appeal for lack of merit.[3]

Hence, the present petition for review on certiorari under Rule 45 of the Rules of Court. Petitioner cites two grounds:

I

THE CA ERRED IN HOLDING THAT PNB CAN NO LONGER PURSUE ITS DEFICIENCY CLAIM AGAINST THE ESTATE OF DECEASED ANTONIO M. CHUA, HAVING ELECTED ONE OF ITS ALTERNATIVE RIGHT PURSUANT TO SECTION 7 RULE 86 OF THE RULES OF COURT DESPITE A SPECIAL ENACTMENT (ACT. NO. 3135) COVERING EXTRAJUDICIAL FORECLOSURE SALE ALLOWING RECOURSE FOR A DEFICIENCY CLAIM AS SUPPORTED BY CONTEMPORARY JURISPRUDENCE.

II

THE CA ERRED IN HOLDING THAT ALLAN M. CHUA, AS SPECIAL ADMINISTRATOR OF THE INTESTATE ESTATE OF HIS DECEASED FATHER ANTONIO M. CHUA ON ONE HAND, AND HIM AND HIS MOTHER ASUNCION CHUA AS HEIRS ON THE OTHER HAND ARE NO LONGER LIABLE FOR THE DEBTS OF THE ESTATE.[4]

The primary issue posed before us is whether or not it was error for the Court of Appeals to rule that petitioner may no longer pursue by civil action the recovery of the balance of indebtedness after having foreclosed the property securing the same. A resolution of this issue will also resolve the secondary issue concerning any further liability of respondents and of the decedent's estate.

Petitioner contends that under prevailing jurisprudence, when the proceeds of the sale are insufficient to pay the debt, the mortgagee has the right to recover the deficiency from the debtor.[5] It also contends that Act 3135, otherwise known as "An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgages," is the law applicable to this case of foreclosure sale and not Section 7 of Rule 86 of the Revised Rules of Court[6] as held by the Court of Appeals.[7]

Private respondents argue that having chosen the remedy of extrajudicial foreclosure of the mortgaged property of the deceased, petitioner is precluded from pursuing its deficiency claim against the estate of Antonio M. Chua. This they say is pursuant to Section 7, Rule 86 of the Rules of Court, which states that:

Sec. 7. Rule 86. Mortgage debt due from estate. — A creditor holding a claim against the deceased secured by mortgage or other collateral security, may abandon the security and prosecute his claim in the manner provided in this rule, and share in the general distribution of the assets of the estate; or he may foreclose his mortgage or realize upon his security, by action in court, making the executor or administrator a party defendant, and if there is a judgment for a deficiency, after the sale of the mortgaged premises, or the property pledged, in the foreclosure or other proceeding to realize upon the security, he may claim his deficiency judgment in the manner provided in the preceding section; or he may rely upon his mortgage or other security alone and foreclose the same at any time within the period of the statute of limitations, and in that event he shall not be admitted as a creditor, and shall receive no share in the distribution of the other assets of the estate; but nothing herein contained shall prohibit the executor or administrator from redeeming the property mortgaged or pledged by paying the debt for which it is hold as security, under the direction of the court if the court shall adjudge it to be for the interest of the estate that such redemption shall be made.

Pertinent to the issue at bar, according to petitioner, are our decisions he cited.[8] *Prudential Bank v. Martinez*, 189 SCRA 612, 615 (1990), is particularly cited by petitioner as precedent for holding that in extrajudicial foreclosure of mortgage, when the proceeds of the sale are insufficient to pay the debt, the mortgagee has the right to recover the deficiency from the mortgagor.

However, it must be pointed out that petitioner's cited cases involve ordinary debts secured by a mortgage. The case at bar, we must stress, involves a foreclosure of mortgage arising out of a settlement of estate, wherein the

administrator mortgaged a property belonging to the estate of the decedent, pursuant to an authority given by the probate court. As the Court of Appeals correctly stated, the Rules of Court on Special Proceedings comes into play decisively.

To begin with, it is clear from the text of Section 7, Rule 89, that once the deed of real estate mortgage is recorded in the proper Registry of Deeds, together with the corresponding court order authorizing the administrator to mortgage the property, said deed shall be valid as if it has been executed by the deceased himself. Section 7 provides in part:

Sec. 7. Rule 89. Regulations for granting authority to sell, mortgage, or otherwise encumber estate – The court having jurisdiction of the estate of the deceased may authorize the executor or administrator to sell personal estate, or to sell, mortgage, or otherwise encumber real estate, in cases provided by these rules when it appears necessary or beneficial under the following regulations:

X X X

(f) There shall be recorded in the registry of deeds of the province in which the real estate thus sold, mortgaged, or otherwise encumbered is situated, a certified copy of the order of the court, together with the deed of the executor or administrator for such real estate, which shall be valid as if the deed had been executed by the deceased in his lifetime.

In the present case, it is undisputed that the conditions under the aforecited rule have been complied with. It follows that we must consider Sec. 7 of Rule 86, appropriately applicable to the controversy at hand.

Case law now holds that this rule grants to the mortgagee three distinct, independent and mutually exclusive remedies that can be alternatively pursued by the mortgage creditor for the satisfaction of his credit in case the mortgagor dies, among them:

- (1) to waive the mortgage and claim the entire debt from the estate of the mortgagor as an ordinary claim;
- (2) to foreclose the mortgage judicially and prove any deficiency as an ordinary claim; and
- (3) to rely on the mortgage exclusively, foreclosing the same at any time before it is barred by prescription without right to file a claim for any deficiency.[9]

In *Perez v. Philippine National Bank*,^[10] reversing *Pasno vs. Ravina*,^[11] we held:

The ruling in *Pasno vs. Ravina* not having been reiterated in any other case, we have carefully reexamined the same, and after mature deliberation have reached the conclusion that the dissenting opinion is more in conformity with reason and law. Of the three alternative courses that section 7, Rule 87 (now Rule 86), offers the mortgage creditor, to wit, (1) to waive the mortgage and claim the entire debt from the estate of the mortgagor as an ordinary claim; (2) foreclose the mortgage judicially and prove any deficiency as an ordinary claim; and (3) to rely on the mortgage exclusively, foreclosing the same at any time before it is barred by prescription, without right to file a claim for any deficiency, the majority opinion in *Pasno vs. Ravina*, in requiring a judicial foreclosure, virtually wipes out the third alternative conceded by the Rules to the mortgage creditor, and which would precisely include extra-judicial foreclosures by contrast with the second alternative.

The plain result of adopting the last mode of foreclosure is that the creditor waives his right to recover any deficiency from the estate.^[12] Following the *Perez* ruling that the third mode includes extrajudicial foreclosure sales, the result of extrajudicial foreclosure is that the creditor waives any further deficiency claim. The dissent in *Pasno*, as adopted in *Perez*, supports this conclusion, thus:

When account is further taken of the fact that a creditor who elects to foreclose by extrajudicial sale waives all right to recover against the estate of the deceased debtor for any deficiency remaining unpaid after the sale it

will be readily seen that the decision in this case (referring to the majority opinion) will impose a burden upon the estates of deceased persons who have mortgaged real property for the security of debts, without any compensatory advantage.

Clearly, in our view, petitioner herein has chosen the mortgage-creditor's option of extrajudicially foreclosing the mortgaged property of the Chuas. This choice now bars any subsequent deficiency claim against the estate of the deceased, Antonio M. Chua. Petitioner may no longer avail of the complaint for the recovery of the balance of indebtedness against said estate, after petitioner foreclosed the property securing the mortgage in its favor. It follows that in this case no further liability remains on the part of respondents and the late Antonio M. Chua's estate.

WHEREFORE, finding no reversible error committed by respondent Court of Appeals, the instant petition is hereby DENIED. The assailed decision of the Court of Appeals in CA-G.R. CV No. 36546 is AFFIRMED. Costs against petitioner.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1]Rollo, pp. 28-36.

[2]Id. at 28.

[3]Id. at 36.

[4]Id. at 17.

[5] Id. at 18.

[6]Id.

[7]Supra, note 5.

[8]DBP vs. Tomeldan, 101 SCRA 171, 174 (1980); DBP vs. Zaragoza, 84 SCRA 668 (1978); DBP vs. Mirang, 66 SCRA 141 (1975); DBP vs. Vda. De Moll, 43 SCRA 82 (1972); Philippine Bank of Commerce vs. De Vera, 6 SCRA 1026 (1962).

[9]Maglaque vs. PDB, 307 SCRA 156, 161-162 (1999); Vda. De Jacob vs. Court of Appeals, 184 SCRA 294, 301 (1990); Bicol Savings and Loan Association vs. CA, et al., 171 SCRA 630 (1989).

[10]124 Phil. 260 (1966).

[11]54 Phil. 378 (1930).

[12]Pasno v. Ravina, supra.

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