

ALFONSO DE LOS REYES ET AL., PLAINTIFFS AND APPELLEES, VS. LUIS DE LEON, DEFENDANT AND APPELLANT.

G.R. No. 16217. May 25, 1964

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This appeal was originally filed with the Court of Appeals. Subsequently, it was endorsed to and accepted by this Court for the reason that the issues raised involve only questions of law.

As security for a loan of P60,000, Japanese Currency, obtained from the herein appellant, the appellees executed two mortgage agreements in favor of the former. The first, entitled "Real Estate Mortgage" and executed on July 4, 1944, so far as germane to this litigation, provided:

"That for and in consideration of the loan of FORTY THOUSAND PESOS (P40,000.00), Philippine Currency, received from the Mortgagee, the receipt of which is hereby acknowledged, and to secure the payment of the same as well as interest thereon, and other advances of money that may hereinafter be obtained from the mortgagor as well as for other valuable considerations received or that the latter may acquire, including interest and expenses of any other obligations owing to the Mortgagee whether direct or indirect, principal or secondary, the Mortgagor does hereby transfer and convey by way of Mortgage unto the Mortgagee, his assigns and successors, the parcel of land herein below described, their title thereto being evidenced by Transfer Certificate of Title No. 66955, of the Register of Deeds of the City of Manila, which parcel of land is more particularly described as follows:

* * * * *

"This Mortgage is constituted under the following conditions:

"(1) Time is the paramount condition of this Agreement, namely, that the said loan of FORTY THOUSAND PESOS (P40,000.00) shall not be paid sooner nor later than within the first Three years after the Greater East Asia War, to be computed from the signing of the Treaty of Peace;

* * * * *

"(3) The Mortgagor x x x shall pay in time the taxes and assessments of the mortgaged property, reporting to the Mortgagee the fact of such payment on the dates in which they were effected;

"(4) The Mortgagor shall not lease the mortgaged property under contract nor shall sell nor dispose of the same in any manner, nor encumber the same with a second mortgage, without the written consent of the Mortgagee;

"(6) If at any time the Mortgagor shall fail or refuse to pay any of his obligations stipulated when due, or whatever obligation herein secured, then all the entire loan of Forty Thousand Pesos (P40,000.00) including accumulated interest, and other obligations of the Mortgagor of any nature, shall become due and payable, and the Mortgagee may immediately foreclose this mortgage judicially or extrajudicially, under Act No. 3135, as amended, and in case of foreclosure, the Mortgagee, on filing the corresponding petition, shall be appointed receiver, * * *,"

The second agreement was denominated "Real Estate Additional Mortgage." Dated July 11, 1944 and constituted upon the same property as the one offered in the first instrument, it stipulated, insofar as relevant to the issues in this case, the following:"

That on July 4th 1944, the Mortgagor obtained from the Mortgagee the loan of FORTY THOUSAND (P40,000.00), secured by alien of first mortgage under real property situated at Nebraska, Malate, Manila, Philippines, more particularly described under Transfer Certificate of Title No. 66955, in the Land Records of the City of Manila, as follows:

* * * * *

"That the MORTGAGOR, desiring to obtain an additional loan of TWENTY THOUSAND PESOS (P20,000.00) from the MORTGAGEE, has, by these presents, transferred, conveyed and assigned, in favor of the MORTGAGEE, his assigns, heirs' and successors in interest, the above described parcel of land, subject to the following conditions: .

"That all the terms and conditions in Deed of Mortgage, dated July 4, 1944, between the same parties, hereto, executed before Notary Public for the City of Manila, Mr. Nicanor Sison, per Doc. No. 21, page 90, Book I, Series of 1944, in the notarial register of the above-mentioned notary public, were herein incorporated and made part of this document, with the exception only of the terms which may be repugnant and contrary to the additional conditions and supplementary agreements hereinafter stipulated, to wit:" The conditions of this additional mortgage, are: (A) That the amount of FORTY THOUSAND PESOS (P40,000.00), including the accrued interest above-mentioned as consideration in Doc. No. 21, Page No. 90, Book I, Series of 1944, executed before the Notary Public for the City of Manila, Mr. Nicanor Sison, between the parties hereto, shall be paid not sooner nor later than within Three(3) years after the war, counted from the date of the signing of the Treaty of Peace by the Belligerent Powers; and (B) That said payment must be made in Philippine Currency; Provided, however, in the event that prior to the termination of the present war and the signing of the Treaty of Peace and its proclamation by the corresponding powers, the Mortgagor does not redeem and pay the loan obtained under the original mortgage as per document above-mentioned, then this additional loan and all its consideration shall be automatically condoned, cancelled and annulled, including TEN THOUSAND PESOS (P10,000.00) of the original loan together with the accrued interest up to the cessation of the war born the entire amount of the original loan, * * *."

Subsequently, or on August 5, 1953, the appellees received the following communication from the appellant's lawyer:

"This is to inform you that by reason of your failure to pay the taxes due for the years 1951 and 1952 and 1953 on the property covered by Transfer Certificate of Title No. 66955 of the City of Manila which was mortgaged by you in favor of Luis de Leon to secure a loan of P60,000.00, your indebtedness in the latter amount together with the accumulated interest thereon has become due and payable, and we are, therefore, taking the necessary extrajudicial steps to foreclosure said property in accordance with the terms and conditions of the two real estate mortgages executed by you in favor of Luis de Leon."

Acting on the foregoing communication, the appellees paid the back taxes complained of on September 3, 1953.

The foreclosure sale was scheduled by the Sheriff on September 4, 1953. Before the sale could proceed, appellee de los Reyes presented to the appellant and his counsel the receipts evidencing payment of the taxes for 1951 and 1952 (only the first installment of the tax for 1953 was then due). Nevertheless, appellant and his counsel insisted on the foreclosure to collect the indebtedness allegedly in the amount of P60,000.00. However, the extrajudicial sale was deferred until September 21, 1953.

At the auction, the appellant was the lone and sole bidder. He won the bid at P30,000.00 and for which he was,

therefore, issued the Sheriff's Certificate of Sale.

On August 21, 1954, appellees filed suit to annul the foreclosure sale, charging therefore three grounds, to wit: (1) misrepresentation of the amount of the actual indebtedness, (2) absence of demand prior to foreclosure, and (3) prematurity, because the foreclosure was effected long before the period stipulated in the contract.

The defendant-appellant filed a timely answer with a counterclaim for damages. In the same, only one ground was invoked by him in justification of the act complained of, namely, "failure on the part of the plaintiffs to pay the real estate taxes for 1951 to 1953, inclusive."

Upon the issues thus joined as above, the trial court rendered judgment holding that "all the proceedings had in the said sale and foreclosure" to be "null and void and of no effect," and condemning appellant to pay the sum of P3,0000 as attorney's fees.

On failing to have the aforesaid judgment reconsidered, the case was appealed.

The judgment should be affirmed for several reasons:

(1) The ground for such foreclosure was the failure of appellees to pay the taxes on the mortgaged property for 1951, 1952 and 1953. The pertinent stipulation of the mortgage contract reads as follows:

"(6) If at any time the Mortgagor shall fail or refuse to pay any of his obligations stipulated when due, or whatever obligation herein secured, then all the entire loan of Forty Thousand Pesos(P40,000.00) including accumulated interest, and other obligations of the Mortgagor of any nature, shall become due and payable, and the Mortgagee may immediately foreclose this mortgage judicially or extrajudicially, under Act No. 3135, as amended, and in case of foreclosure, the Mortgagee, on filing the cor-responding, petition, shall be appointed receiver, * * *;"

The issue on this point is: Did appellees incur in default in their obligation to pay the taxes, vis-a-vis appellant, even without previous demand by the latter for such payment? And did appellees, assuming that their failure to pay the taxes rendered the entire loan due and payable, incur in default in the payment of said loan in the absence of a previous demand upon them? It should be remembered that no demand was made either in respect of the taxes or of the loan itself, the only notice given to appellees being the letter received by them from appellant's lawyer on August 5, 1953, to the effect that he was taking the necessary steps to foreclose the mortgage extrajudicially because the taxes had not been paid.

Article 1169 of the Civil Code provides that those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of the obligation. Demand is dispensed with only: (a) when the obligation or the law expressly so declares, that is, that the debtor shall be considered in default without the need for such demand;(b) when time is of the essence of the obligation; and (c)when demand would be useless.

Circumstances (a) and (c) were not present in the instant case. Circumstance (b) was stipulated, but in a sense contrary to the pretension of appellant. Thus paragraph (1) of the original contract of mortgage states: "Time is the paramount condition of this agreement, namely, that the said loan of P40,000.00 shall not be paid sooner nor later than within the first three (3) years after the Greater East Asia War, to be computed from the signing of the Treaty of Peace." In the subsequent mortgage of July 4,1944, for an additional loan of P20,000.00, the time element was emphasized and modified by the following clause: "Provided, however, in the event that prior to the termination of the present war and the signing of the Treaty of Peace and its proclamation by the corresponding powers, the Mortgagor does not redeem and pay the loan obtained under the original mortgage . . . then this additional mortgage shall be automatically condoned, cancelled and annulled, including ten thousand pesos (P10,000.00) of

the original loan together with accrued interest up to the cessation of the war. In other words, provided appellees did not accelerate payment but waited instead until after the treaty of peace was signed and proclaimed by the "corresponding powers," they were entitled to a reduction of their mortgage indebtedness to only one-half, or P30,000.00. The treaty of peace was signed on September 8, 1951 and proclaimed by President Magsaysay on November 5, 1956. From the date of signing appellees had until September 1954, and until November 1959 from the date of proclamation. Consequently, under neither alternative had there been default in the fulfillment of the principal obligation when the mortgage was foreclosed extra-judicially and the property sold on September 4, 1953.

Referring specifically to the nonpayment of the taxes for 1951, 1952 and the first part of 1953, we believe that in the light of the principal stipulation of the contract concerning the time when the mortgage debt was to be paid, such nonpayment of taxes was not a material breach of the contract and that in any event, when the taxes were actually paid there was substantial compliance with the obligation in this particular aspect so as to arrest effectively the foreclosure sale.

(2) The fixing of the period for payment was obviously to insure, for the benefit of appellant, that such payment would be made in Philippine currency and not in Japanese fiat money; and for the benefit of appellees, so that their indebtedness would be reduced from P60,000.00 to only P30,000.00. Appellees did not lose their right to avail of the period for having violated "any undertaking in consideration of which the creditor agreed to the period" (Art. 1198 Civil Code). This is so because the timely payment of real estate taxes on the mortgaged property was clearly not the consideration which moved the parties to fix, as they did, the term or period for the payment of the indebtedness.

(3) The extrajudicial foreclosure of the mortgage at the instance of appellant was for the sum of P60,000.00 instead of only P30,000.00, which was the amount appellees were bound to pay after the treaty of peace was signed and/or proclaimed. Thus, after appellant had bought the mortgaged property at the sheriff's sale appellees would still stand indebted to them for P30,000.00. This result is entirely against the import of the contract and the intent of the parties thereunder. It is unjust, unfair and oppressive, for appellees in effect would be penalized for the acceleration of payment which was not of their own choosing, but brought about by the extrajudicial foreclosure made at the instance of appellant when no default had yet been incurred by appellees.

The judgment appealed from is affirmed, with costs.

Bengzon, C.J., Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, and Dizon, JJ., concur.

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