

GREGORIO LEGASPI Y NIEVES, PLAINTIFF AND APPELLEE, VS. ESTEBAN AGUILAR ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 4482. December 26, 1908

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

A complaint was filed by Gregorio Legaspi, for the collection of a mortgage debt, against four brothers and their sister, all of the name of Aguilar. The action was prosecuted against the four brothers, but not against the sister because of her death. Judgment was entered against the defendants present, ordering that the amount due be deposited with the court together with interest thereon and costs of the execution, or, in default thereof the sale by public auction of the property mortgaged, for the four-fifths of the value fixed in the obligation, in the event of such sale, as corresponding to the share which the said four defendants possessed in the property.

The value stipulated in the written obligation, in the event of a public sale of the mortgaged property, was P22,000, and the upset price fixed in the judgment for execution was P17,000.

This judgment was rendered on the 20th of May, 1907, by the Court of First Instance of Manila, before which the action was brought.

The money was not deposited, and in consequence the public sale of the mortgaged property was held on September 27, 1907, but no bidders appeared.

Thereupon the plaintiff—and this is the question at issue—on the 7th of October of the same year presented the following motion:

"That on the 27th of September last, a public sale was held by order of the court, of that portion of the property pertaining to the defendants, and no bidders appeared at said public sale. The plaintiff therefore prays that the said property be again sold at auction with such reduction in the upset price as the court may deem proper, and in case of no bidders appearing at such sale, that the court order the adjudication of the property to the plaintiff for the amount owing by the defendants, and already fixed in the judgment of this honorable court."

The amount so fixed in the judgment of May 20, 1907, was "seven thousand two hundred pesos, Philippine currency (P7,200), with interest thereon at the rate of eighty pesos (P80) per month from March 2, 1904, inclusive, until the deposit is made, and five hundred pesos (P500) for expenses of litigation which must be proportionally paid by the four defendants."

After hearing counsel for the defendants, and after due consideration of the motion, the court below rendered a well-reasoned decision, the dispositive part of which is as follows:

"Acceding, therefore, to the prayer of the plaintiff's representative, it is hereby ordered that, after due publication and compliance with the formalities prescribed by the code of procedure in force, the interest or share of the defendants Esteban Aguilar y Hugo, Manuel Aguilar y Hugo, Benito Aguilar y Hugo, and Juliana Aguilar y Hugo in the four-fifths of the mortgaged property described in the judgment which this court

rendered on the 20th of May of this year, be again offered for sale at public auction with a reduction of 25 per cent from the P17,000 fixed as upset price at the previous sale, in order to satisfy, with the proceeds thereof, the mortgage debt and the costs for which the said four defendants are liable, as ordered in the said judgment; and according to the result of the sale, or of what the plaintiff may ask in case no bidder should appear thereat, this court will, take such action as may be proper."

The defense appealed from the above order in due course and form; and the court below approved the appeal and suspended the execution.

The bill of exceptions being forwarded for the purposes of the appeal, the appellants submitted, to the decision of this court the following alleged errors of law:

"FIRST ERROR.

"The court below erred in ordering a new public sale of the property in question with a reduction of 25 per cent in the upset price fixed by the parties, to wit, the mortgagee and the mortgagors, for the reason that said order is contrary to the mortgage instrument and to articles 1278 and 1256 of the Civil Code and 127 of the Mortgage Law.

"SECOND ERROR.

"The court below erred in directing that the Spanish civil procedure be followed in the new sale ordered by it, as such ruling is contrary to section 795 of Act No. 190, which provides for the repeal of all procedures in civil actions upon the promulgation of, or from the time when the present law went into force."

In order to decide the question set up, and the bases of the appeal as above set forth, it is first necessary to observe:

1. That the original law which regulated the foreclosure of mortgaged real estate was the Ley de Enjuiciamiento Civil de 1888, articles 1471 to 1513 inclusive; of these it is proper to cite article 1476, which provided for the previous appraisal of the property subject to execution and sale by public auction. Articles 1486, 1487, and 1488 in particular should be noted; they provided that, if there were no bidders, it was optional with the party foreclosing to request either that the property be adjudicated to him for the two-thirds of its appraised value, or that it be again offered at public auction with a reduction of 25 per cent of the assessed value; and, if at said sale no bidders appeared, he might ask for either the adjudication of the property for the two-thirds of the upset price at said second sale, or that it be delivered to him for administration in order to apply the income to the payment of interest and extinction of the principal; if neither of the said two methods suited the judgment creditor, he could ask for a third public sale to be held without reserve. Article 1488 provides:

"In this case, should there be a bidder who offers two-thirds of the price that served as the upset price for the second public sale, and who accepts the conditions thereof, the foreclosure shall be approved.

"If the amount of the said two-thirds is not obtained, the approval of the foreclosure shall be withheld, the judgment debtor shall be informed of the price that has been offered, and he shall be entitled to pay the creditor releasing the property, within the nine days following, or he may present persons willing to increase the bid, making the deposit provided by article 1482.

"At the expiration of the nine days, if the judgment debtor has neither paid nor increased the bid, the foreclosure shall be approved and ordered to be effective."

2. That thereafter came the amended Mortgage Law of 1893, and a much shorter and more rational procedure was introduced by its articles 127 to 133 than had obtained in the Philippines, and is still in force in Spain; formalities were abolished, expenses and delays avoided, and land credit was by this summary means facilitated; such was

the original purpose of said law, which was eminently a progressive one, and thus its article 127 provided:

"In the mortgage shall appear the value of the estate as appraised by the contracting parties which shall serve as a basis for the only judicial sale which can take place if, the period of the loan having expired, it does not appear in the registry of property that said loan has been paid."

3. That finally, the foreclosure of mortgaged property is now subject to the Code of Procedure in Civil Actions, that is, Act No. 190 of the Philippine Commission, section 257 of which reads thus:

"Sale of the mortgaged property.—When the defendant, after being directed to do so, as provided in the last preceding section, failed to pay the principal, interest, and costs at the time directed in the order, the court shall order the property to be sold in the manner and under the regulations that govern sales of real estate under execution; * * *"

And the sale of property in compliance with a judgment is governed by section 457, which reads:

"Sale on execution.—All sales of property, under execution must be made at auction, to the highest bidder, between the hours of nine in the morning and five in the afternoon. * * *"

Assuming this, and deciding the question, as the fundamental fact on which the first error assigned by the appellants is based, the following clause of the mortgage instrument executed by them in favor of their creditor, Legaspi, should be considered. It reads thus:

"Eighth. That the said party, in accord with Señor Legaspi, appraises the mortgaged property in the sum of P22,000, which shall serve as the upset price at the only public sale to be held in accordance with the prescriptions of the Mortgage Law and its Regulations, or with the formalities established by the Code of Procedure in force, if at the time when this obligation becomes due the same is not canceled, with express waiver of any further appraisalment and of the respective action."

In accordance with the law that governs the contract, the debtors expressly subjected themselves to "the provisions of the Mortgage Law and its Regulations," and article 172 of the Regulations for the execution of the Mortgage Law provides as follows:

In paragraph 7—

"Should there be no bidder at this first auction, the claimant may request that the property be awarded to him."

In paragraph 8—

"Should the claimant not demand the award (as in the case at bar), he may request that the mortgaged property be again offered at public sale, reducing the figure acceptable at the first one by 25 per cent * * * ."

This being the provision of law applied by the court below in the judgment appealed from, equal to that invoked therein, that is, article 1846 of the Ley de Enjuiciamiento Civil mentioned in the preliminary observations, it is evident that the court below did not err, in the manner alleged, when ordering a new sale with a reduction of 25 per cent of the figure acceptable at the first auction, nor is said provision in conflict with the mortgage deed; on the contrary, it entirely agrees with it, and also with article 1278 of the Civil Code, which enjoins the faithful performance of contracts.

Nor is it contrary to the provisions of article 1256 of the Civil Code, which only states that "the validity and fulfilment of contracts can not be left to the will of one of the contracting parties." It was not the will of the judgment creditor that prevailed in the order contained in the judgment appealed from, but, as may be seen, it is the express precept of the law itself, which, in establishing the only sale, did not purpose to so benefit the debtor that, in the event that no bidder appeared, the collection of the mortgage debt should remain forever in abeyance,

but was expressly made in favor of the creditor, whom the regulations authorize to request a second sale, with a reduction of 25 per cent; this is what was ordered in the judgment appealed from. As a last resort, he is authorized to seek the remedy provided by paragraph 9, the last one of said article 172 of the Regulations for the execution of the Mortgage Law, which reads as follows:

"If the second auction does not effect the award or sale, others may be held at the instance of the claimant for an amount not less than the preferred credits, said claimant complying with the requisite mentioned in the preceding paragraphs, if proper. In such case the award for said price may also be requested, with the obligation of meeting said charges when they fall due, being subrogated in the place of the debtor, as far as the charges are concerned."

The above is equivalent to requesting an award for the amount of his credit where no other preferred credits exist.

Finally, the provision contained in the judgment appealed from is not in opposition to article 127 of the Mortgage Law, inasmuch as, although said law has provided for one sole auction sale, the regulations for its execution permit, however, at the instance of the claimant, as has been shown, other sales, always tending to satisfy in any case and in some way the mortgage creditor in whose favor the sole sale was established. In the memorial addressed to the Cortes Legislativas when the project of the Mortgage Law was submitted, the following motives were assigned for the amendment:

"But where the voice of experience has been heard with the greatest clamor against the law, demanding immediate relief, is where it refers to the procedure for making mortgage debts effective. Its crushing confusion, the uncertainty of results, and its incalculable cost restrain capital or suggest usurious conditions; sales and resales take the place of loans, with the object of avoiding all proceedings to the prejudice of the landowner; interest is stipulated which triplicates the capital loaned, and perhaps by the employment of other means the debtor is exposed to penal responsibility, converting the sanctity of laws enacted for the punishment of crimes into a vile instrument of avarice against the unfortunate. Distrust causes these means to be employed because the legal procedure does not satisfy the reasonable requisites of contracts, and to uproot these evils, to furnish land with the capital it needs, and to give the lender assurances of speedy and easy recovery of his loans, is the object of the most important reform proposed by the Government, suppressing proceedings which, without positively guaranteeing one's rights, destroy those most sacred. Previous appraisalment, uniformity of judicial action in all necessary investigations, suppression of all litigation, only one summons and the immediate sale by auction, are the bases of the new law. We have abolished suits, exemptions, letters requisitorial (exhortos) writs of attachment on the mortgaged property, proceedings in the nature of a demurrer, simultaneous auctions, and a great many other barriers in the path of the credit of realty, which had been placed with the best of intentions, but from which those in good faith were the only victims."

Therefore, the erroneous conception formed of article 127 of the Mortgage Law on the part of the writer of the following in the appellants' brief, becomes evident, to wit:

"That perhaps the lawmaker, by prescribing the sole sale, had already foreseen the case where, if no bidder appeared at such sale, the creditor would keep the mortgaged property and pay the difference in the value if it was greater than the mortgage, that is, by delivering to the mortgagee the excess of the value of the property, in accordance with the credit and the appraisalment fixed by the contracting parties."

It would be absolutely absurd that the creditor should be converted into an obligatory purchaser for the upset price fixed for the public sale, as stipulated in the contract, perhaps not in consideration of the thing itself but of the debtor and other preferred creditors possibly with rights superior to those of the mortgagor, and, by a method of procedure and by reason of defects unforeseen, to convert a contract of mortgage loan into one of sale, in other words, to impose upon the lender the obligation to become a landowner.

After all the foregoing considerations it is seen that, in the present case, according to the clause above transcribed, it is the law of contracts that the contracting parties shall submit to the formalities of the present Code of Civil Procedure, that is, to the sale by public auction, without reserve to the highest bidder, as provided by section 457 already cited.

In said law no provision whatever exists whereby a second and ulterior sale is prohibited; by section 257 already cited, concerning the sale of mortgaged property, the necessity of the confirmation of the sale by a decree of the court is prescribed, but at the same time it provides that, if for good reasons the court should decline to confirm such sale and should declare it null and void, it shall direct a new sale to be held in accordance with law.

Therefore, the order of the court below directing that a new sale be held, is in every way in accordance with the law in force; the fixing of an upset price with a reduction of 25 per cent from the first public sale, however, is not, and in this the appellants are right in alleging, as the second error incurred by the court below, the fact that the Spanish civil procedure was applied for the new sale, that is, the repealed Ley de Enjuiciamiento Civil formerly in force. Nor should any of the provisions of article 172 of the Regulations for the execution of the Mortgage Law have been applied. It is rightly stated in the appellants' brief that section 795 of Act No. 190 repeals all of the former civil procedures. Therefore, in this part the order appealed from should be amended in the sense that a new sale should be held and the property sold to, the highest bidder, without any reserve whatever.

Therefrom the judgment appealed from is hereby affirmed in so far as it orders a second sale of the mortgaged property, and reversed in so far as it directs that the sale be effected with a reduction of 25 per cent of the P17,000, the upset price fixed in the previous public sale; the sale to be held shall be in strict conformity with the provisions of section 457 of the Code of Civil Procedure. No special ruling is made as to costs in this instance. So ordered.

Torres, Mapa, Carson, Willard, and Tracey, JJ., concur.

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