

PRUDENTIAL BANK, PLAINTIFF-APPELLEE, VS. RENATO M. MARTINEZ AND VIRGINIA J. MARTINEZ, DEFENDANTS-APPELLANTS.

G.R. No. 51768. September 14, 1990

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This case is certified to Us by the Court of Appeals in its Resolution dated August 30, 1979, for the reason that only pure questions of law are involved.

The Court of Appeals adopted the findings of fact of the trial court as follows:

"This is a case for sum of money filed by plaintiff Prudential Bank against defendants Renato M. Martinez and Virginia J. Martinez, seeking to recover a deficiency of P25,775.10 with daily interest thereon of P15.35.

"The plaintiff in its complaint alleged that on January 27 and February 2, 1970 defendants obtained a loan from the plaintiff in the total sum of P48,000.00 and in consideration thereof, the said defendants executed on said dates promissory notes in favor of the plaintiff, promising to pay jointly and severally, the sum of P48,000.00 on or before January 27, 1971 with interest thereon at 12% per annum, partially secured by a real estate mortgage on the property covered by Transfer Certificate of Title No. 97467 of the Register of Deeds of Manila; that the loan became due and defendant defaulted despite plaintiff's demand letters; that as a consequence, the mortgage was extra-judicially foreclosed; that the plaintiff was the highest and lone bidder at the auction sale, for the sum of P52,760.00; that after deducting therefrom the attorney's fees, registration fees, sheriff's fees, and publication expense, there still remained a balance of P25,775.10 due to plaintiff, which plaintiff now seeks to recover plus interest and attorney's fees.

"The defendants admit the allegations in the complaint, except paragraphs 8 and 9 thereof and alleged that plaintiff has no cause of action and therefor not entitled to recover and pray for P3,000.00 attorney's fees plus costs of litigation in the amount of P1,000.00.

"When the issues were joined a pre-trial was conducted and the Court issued the following pre-trial order, to wit:

'With the admission in the answer of paragraphs 1 to 5 of the complaint, the parties believed that there are no controversies as to the facts. From the point of view of the defendants, they will submit the case on the following issues: (1) Whether plaintiff can still collect the deficiencies after the extra-judicial foreclosure of mortgage; (2) what should be the basis of the computation of the attorney's fees? Should it be the principal or should the 10% be based on the principal plus interest; and (3) Whether the plaintiff can still collect attorney's fees in its effort to recover the deficiencies. However, plaintiff's counsel believes there is only one issue and that is whether any deficiency amount can be collected after extra-judicial foreclosure of mortgage.

'WHEREFORE, it is hereby ordered that the parties be given a period of thirty (30) days from today within which to file their respective memoranda simultaneously.

'SO ORDERED.'" (Rollo, pp. 30-32)

On July 8, 1977, the lower Court rendered a decision, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants, ordering the latter to pay the former, jointly and severally, the amounts of P25,775.10 with daily interest thereon of P15.85 from September 10, 1976 until fully paid and P2,500.00 for and as attorney's fees, plus costs of suit." (Records, p. 18)

Thereupon, defendants appealed to the Court of Appeals with these two assignments of errors, namely -

"I

"THE LOWER COURT ERRED IN HOLDING THAT THE PLAINTIFF-APPELLEE IS ENTITLED TO RECOVER THE DEFICIENCY IN THE SUM OF P25,775.10 AFTER THE EXTRA-JUDICIAL FORECLOSURE OF MORTGAGE TO SATISFY THE INDEBTEDNESS, AND AFTER THE MORTGAGED PROPERTY HAD BEEN CONVEYED TO THE PLAINTIFF-APPELLEE IN SATISFACTION OF THE LOANS.

"II

"THE LOWER COURT ERRED IN AWARDING THE SUM OF P2,500.00 AS ATTORNEY'S FEES TO PLAINTIFF-APPELLEE." (Appellants' Brief, p. 9, Rollo)

Appellants argue that the Legislature never intended to grant to a mortgagee the right to recover the deficiency arising from an extrajudicial foreclosure of mortgage inasmuch as such recovery is not a natural right of the mortgagee, hence, the need to expressly grant the same in a judicial foreclosure proceedings; that consequently, an express prohibition against such claim would be quite superfluous; and that besides, there is no need to enumerate negative remedies or solutions in the law. Further, they aver that if mortgagees were allowed such right, the debtors would be at the mercy of their creditors considering the summary nature of extrajudicial foreclosure proceedings. They, likewise, point to the limited readership of auction sale notices which lead to the sale of mortgaged properties for much less than their actual value notwithstanding that the mortgage value of the said properties is higher than its fair market value. Finally, appellants assail the award of attorney's fees in the sum of P2,500.00 as unconscionable. They claim that the computation of the attorney's fees should have been based on the terms of promissory note which provided for a ten percent (10%) award of the principal obligation; and that since the attorney's fees were already collected by the appellee when it foreclosed the mortgage, such fees should no longer be awarded in this case. (Appellants Brief, pp. 4-11, Rollo, p. 9)

We affirm.

We have already ruled in several cases that in extrajudicial foreclosure of mortgage, where the proceeds of the sale are insufficient to pay the debt, the mortgagee has the right to recover the deficiency from the debtor (Philippine Bank of Commerce v. De Vera, L-18816, December 29, 1962, 6 SCRA 1026; Development Bank of the Philippines v. Vda. de Moll L-25802, January 31, 1972, 43 SCRA 82; Development Bank of the Philippines v. Murang, L-29130, August 8, 1975, 66 SCRA 141; Development Bank of the Philippines v. Zaragoza, L-23493, August 23, 1978, 84 SCRA 668; and DBP v. Tomeldan, G.R. No. 51269, November 17, 1980, 101 SCRA 171). A careful scrutiny of the arguments presented in the case at bar yields no substantial and convincing reasons for Us to depart from Our previous ruling. Appellants' arguments merely rehashed the objections already considered and overruled in the aforementioned cases. Thus, in Philippine Bank of Commerce v. De Vera (supra), We declared that:

"A reading of the provisions of Act No. 3135, as amended (re extra-judicial foreclosure) discloses nothing, its is true, as to the mortgagee's right to recover such deficiency. But neither do we find any provision thereunder

which expressly or impliedly prohibits such recovery.

"Article 2131 of the new Civil Code, on the contrary, expressly provides that 'The form, extent and consequences of a mortgage, both as to its constitution, modification and extinguishment, and as to other matters not included in this Chapter, shall be governed by the provisions of the Mortgage Law and of the Land Registration Law.' Under the Mortgage Law, which is still in force, the mortgagee has the right to claim for the deficiency resulting from the price obtained in the sale of the real property at public auction and the outstanding obligation at the time of the foreclosure proceedings. (See *Soriano v. Enriquez*, 24 Phil. 584; *Banco de Islas Filipinas v. Concepcion e Hijos*, 53 Phil. 86; *Banco Nacional v. Barreto*, 53 Phil. 101). Under the Rules of Court (Sec. 6, Rule 70), 'Upon the sale of any real property, under an order for a sale to satisfy a mortgage or other incumbrance thereon, if there be a balance due to the plaintiff after applying the proceeds of the sale, the court, upon motion, should render a judgment against the defendant for any such balance for which, by the record of the case, he may be personally liable to the plaintiff, x x x.' It is true that this refers to a judicial foreclosure, but the underlying principle is the same, that the mortgage is but a security and not a satisfaction of indebtedness. x x x.

"Let it be noted that when the legislature intends to foreclose the right of a creditor to sue for any deficiency resulting from the foreclosure of the security given to guarantee the obligation, it so expressly provides. Thus, in respect to pledges, Article 2115 of the new Civil Code expressly states: 'x x x. If the price of the sale is less (than the amount of the principal obligation) neither shall the creditor be entitled to recover the deficiency, notwithstanding any stipulation to the contrary.' Likewise in the event of the foreclosure of a chattel mortgage on the thing sold in installments 'he (the vendor) shall have no further action against the purchaser to recover any unpaid balance of the price. Any agreement to the contrary shall be void' (Article 1484, paragraph 3, *ibid*). It is then clear that in the absence of a similar provision in Act No. 3135, as amended, it can not be concluded that the creditor loses his right given him under the Mortgage Law and recognized in the Rules of Court, to take action for the recovery of any unpaid balance on the principal obligation, simply because he has chosen to foreclose his mortgage extra-judicially pursuant to a special power of attorney given him by the mortgagor in the mortgage contract." (pp. 1029-1030)

Moreover, the fact that the mortgaged property is sold at an amount less than its actual market value should not militate against the right to such recovery. We fail to see any disadvantage going for the mortgagor. On the contrary, a mortgagor stands to gain with a reduced price because he possesses the right of redemption. When there is the right to redeem, inadequacy of price should not be material, because the judgment debtor may reacquire the property or also sell his right to redeem and thus recover the loss he claims to have suffered by the reason of the price obtained at the auction sale (*De Leon v. Salvador*, L-30871, December 28, 1970 and *Bernabe v. Cruz, et al.*, L-31603, December 28, 1970; 36 SCRA 567). Generally, in forced sales, low prices are usually offered and the mere inadequacy of the price obtained at the sheriff's sale unless shocking to the conscience will not be sufficient to set aside a sale if there is no showing that in the event of a regular sale, a better price can be obtained (*Ponce de Leon v. Rehabilitation Finance Corporation*, L-24571, December 18, 1970, 36 SCRA 289).

Lastly, We find that the award of attorney's fees is proper. It cannot be disputed that the proceedings in the extrajudicial foreclosure and the deficiency suit are altogether different. The first is extrajudicial and summary in nature while the second is a court action. Hence, the efforts exerted by the lawyer in these two separate courses of action should be recognized. Besides, the basis of the extrajudicial foreclosure proceeding was the Deed of Real Estate Mortgage, particularly condition No. 7 thereof, where the parties stipulated for a ten percent (10%) attorney's fees to be collected in the event that the mortgage is foreclosed or a legal action is taken to foreclose the mortgage (Appellee's Brief, Rollo, p. 9, underlining supplied). However, the proceeds in that sale were insufficient to pay the debt contained in the appellant's promissory note. The appellee was, therefore, constrained to file a deficiency suit, an eventuality not covered by the Deed of Real Estate Mortgage. Necessarily, the basis of

this case is the promissory note executed by the appellants. We find that the note itself shows that appellants obligated themselves to pay the sum of ten percent as attorney's fees whether incurred or not, exclusive of cost and other expenses of collection (Records, p. 7). Clearly, the trial court's award of attorney's fees was not without basis. The amount of P2,500.00 awarded as attorney's fees being less than ten percent (10%) of the deficiency sued for is just and proper in the premises.

ACCORDINGLY, the decision Appealed from is hereby AFFIRMED. Costs against the appellants.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Grino-Aquino, JJ., concur.

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