

**FORTUNE HOMES, INC., PETITIONER, VS. COURT OF APPEALS,
NATIONAL INVESTMENT AND DEVELOPMENT CORPORATION,
SHERIFF OF BACOLOD CITY AND REGISTER OF DEEDS OF BACOLOD
CITY, RESPONDENTS.**

G.R. No. 57617. May 24, 1984

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the validity of an extrajudicial foreclosure on April 13, 1968 of a 1965 mortgage on a 53-hectare lot located in Bacolod City, which was given as security for a loan of one million dollars, and the mortgagor's liability to pay National Investment and Development Corporation a deficiency of P9,850,915.75 with 6% interest per annum from June 30, 1973 until the amount is paid.

Fortune Homes, Inc., the operator of the Fortune Town Subdivision in Bacolod City, mortgaged to National Investment and Development Corporation (a subsidiary of the Philippine National Bank) the said lot in consideration of NIDC's acting as the primary obligor in the loan of \$1,000,000 extended to Fortune Homes by the Continental Illinois National Bank and Trust Company of Chicago (Exh. B).

Fortune Homes failed to pay three amortizations on the loan. NIDC was constrained to pay the sum. NIDC asked the sheriff to foreclose the mortgage. On April 29, 1968, he sold the mortgaged property at public auction. NIDC offered the highest bid of P1,446,343.65. The sheriff issued to it a certificate which was annotated TCT-No. T-15305, the title covering the lot.

Two days before the expiration of the one-year period of redemption, or on July 30, 1969, Fortune Homes filed an injunction suit in the Court of First Instance to prevent NIDC from consolidating its title over the mortgaged lot. The petition was amended to annul the foreclosure sale. Actually, NIDC consolidated its title on April 19, 1974 during the pendency of the case. It was issued a new title (270, Record on Appeal).

The trial court in its 1976 judgment found that the mortgage was validly foreclosed. On NIDC's counter-claim, it ordered Fortune Homes to pay the deficiency already mentioned. The judgment was affirmed by the Court of Appeals which clarified that the interest on the deficiency was six percent per annum.

Fortune Homes has not raised any important legal issue. Its brief has no assignment of errors and no definite prayer.

It argues that the foreclosure sale was void because (1) it did not receive the full amount of the loan, (2) the balance of \$200,000 was withheld by the PNB, (3) the NIDC prevented fulfillment of the obligation, (4) it was not in default and (5) the foreclosure was premature.

All these contentions, which involve factual issues, were thoroughly and exhaustively resolved by the trial court and the Appellate Court.

For example, its contention that it actually received only \$800,000 of the loan is belied by the admission of Eriberto Roxas, its board chairman, and Luis L. Gonzaga, a director, that a portion of the "compensating balance" of \$200,000 was credited to Fortune Homes account (32-33 tsn August 10, 1977; 42-43 tsn February 21, 1972).

On the question of its default, there is no doubt that Fortune Homes failed to pay three amortizations which NIDC had to pay (Exh. I-7 to I-9). Under the acceleration clause of the mortgage (Exh. D, par. [c]), NIDC had the right to treat all the amortizations due and demandable, and, as stipulated, to resort to extra-judicial foreclosure.

Fortune Homes' other argument that NIDC failed to live up to its purpose is not an issue that can be properly ventilated in this appeal.

NIDC in its brief observes that Fortune Homes diverted the proceeds of the loan for other purposes. It was able to develop only twenty percent of the project (pp. 29-30).

WHEREFORE, the judgment of the Court of Appeals is affirmed. Costs against the petitioner. SO ORDERED.

Makasiar, (Chairman), Guerrero, Escolin, and Gutierrez, Jr., JJ., concur.

Concepcion, Jr., and Abad Santos, JJ., no part.

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