

BICOL SAVINGS & LOAN ASSOCIATION, PETITIONER, VS. JAIME GUINHAWA AND THE HON. PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF CAMARINES SUR (10TH JUDICIAL DISTRICT), BRANCH II...

G.R. No. 62415. August 20, 1990

Ponente: PARAS, J.

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PARAS, J.:

Sometime on June 19, 1980, Victorio Depositario together with private respondent Jaime Guinhawa, acting as solidary co-maker, took a loan from petitioner Bicol Savings and Loan Association (BISLA, for brevity) in the sum of P10,622.00, payable at P535.45 every 19th day of each month beginning July 1980 until maturity on June 19, 1982.

To secure the payment of the foregoing loan obligation, the principal borrower Victorio Depositario put up as security a chattel mortgage which was a Yamaha Motorcycle. Said motorcycle was eventually foreclosed by reason of the failure of Depositario and private respondent Guinhawa to pay the loan. As a result of the foreclosure, there was a deficiency in the amount of P5,158.06 as of July 31, 1981, where BISLA made a demand to pay the same.

Thus, on August 6, 1981, petitioner BISLA (plaintiff therein) filed in the City Court of Naga, Branch II, a complaint for the recovery of a sum of money constituting the deficiency after foreclosure of the chattel mortgage put up by the principal borrower Depositario against the latter and his solidary co-maker Guinhawa (herein private respondent) as defendants.

Eventually, a stipulation of facts was entered into between BISLA and Guinhawa. They agreed to drop Depositario, as "his whereabouts being unknown now and he could not be served with summons" (p. 8, Rollo). Said stipulation of facts reads:

"1) That defendant admits that after the foreclosure of the chattel mortgage executed by defendant Victorio Depositario, the principal debtor, as security for the payment of the loan, there is left a deficiency in the sum of P5,158.06 as of July 31, 1981, aside from the agreed interest thereon at 17% per annum compounded monthly;

"2) That defendant is only a co-maker in the aforementioned loan but that, however, under the promissory note he jointly and severally promised with Victorio Depositario to pay plaintiff the said loan; that he is not a party to the chattel mortgage; and that the same was foreclosed without notice to him;

"3) That both parties agree that the only issue to be resolved is whether defendant herein is liable to pay plaintiff the sums mentioned in paragraph 1 hereof;

"4) That in view thereof, both parties agree to submit this case for decision based on the foregoing stipulation of facts;

"5) That should decision be in favor of the plaintiff the defendant agrees to pay plaintiff not only the sums mentioned in paragraph I hereof but an additional amount equivalent to 10% of the aggregate amount due the plaintiff as attorney's fees and to pay the costs. Should the decision, however, be in favor of the defendant, plaintiff will pay the defendant the same amount of attorney's fees that defendant would have paid if decision is in favor of the plaintiff, and for the latter also to pay the costs."

(pp. 3-4, Petition; pp. 8-9, Rollo)

On December 4, 1981, the City Court rendered a decision[1] in favor of the petitioner, ruling in part:

"It is undisputed that the obligation of both defendants under the promissory note they executed in favor of the plaintiff is joint and several. That after the plaintiff foreclosed the chattel mortgage executed by defendant Victorio Depositario there remains a deficiency which is now the subject of this case. The right of the plaintiff to claim for the deficiency resulting between the price obtained in the sale of the property and the outstanding obligation at the time of the foreclosure is clear. (Philippine Bank of Commerce vs. De Vera, 6 SCRA 1026). Under Art. 1216 of the Civil Code, as quoted by the plaintiff in its memorandum, plaintiff has the right to proceed against any of the herein defendants who are solidary debtors or to both of them simultaneously. Said article further provides that a demand made against anyone of the solidary debtors shall not be an obstacle to those which may later on be directed against the others, so long as the debt has not been fully paid or collected. In the present case, the plaintiff first foreclosed the mortgage put up by defendant Depositario but since the debt was not fully paid out of the proceeds of the sale it is now proceeding against any or both of the defendants herein. Article 1216 of the Civil Code gives the plaintiff in this case the option who among the defendants as solidary debtors, should be sued, the debt not being fully paid (PNB vs. Concepcion Mining Co., Inc. 5 SCRA 745)." (pp. 35-36, Rollo)

On appeal to the respondent Court of First Instance of Camarines Sur, Branch III, it rendered a decision reversing the said lower court's decision, ruling in part:

"It is true that the assumed obligation by a co-maker is solidary in nature with respect to the principal debtor but when the creditor chose to foreclose the mortgage, it simply means that the creditor chose to collect from Depositario, one of the solidary debtors and not the appellant. If there is any deficiency in payment, how can the herein appellant be made to assume the deficiency since the appellee-creditor choose to foreclose and collect through the mortgage of which the appellant in the first place was not a party to the said mortgage?

"It is not disputed that a creditor can exact or collect payment of the indebtedness from any of the solidary debtors in a promissory note of which a co-maker assumes a character of one, the appellant herein can not evade or ignore the collection if the creditor sued upon the promissory note. But what did the creditor do? Instead of proceeding upon the promissory note of which the appealing co-maker stands as solidary debtor, the appellee chose the chattel mortgage and collect therefrom of which mortgage the appellant was never a party and having a deficiency therein, the creditor, the herein appellee, would like to collect from the promissory note. In a case of identical setting, it was held that foreclosure of mortgage precludes any further action against the debtor and his guarantor (Pascual vs. Universal Motors, 61 SCRA 121)." (p. 71, Rollo)

Hence, this petition.

The petition is impressed with merit.

In a number of cases, We already held that if in an extra-judicial foreclosure of a chattel mortgage a deficiency exists, an independent civil action may be instituted for the recovery of said deficiency. If the mortgagee has foreclosed the mortgage judicially, he may ask for the execution of the judgment against any other property of the mortgagor for the payment of the balance. To deny to the mortgagee the right to maintain an action to recover the deficiency after foreclosure of the chattel mortgage would be to overlook the fact that the chattel mortgage is only given as a security and not as payment for the debt in case of failure of payment. (Bank of the Philippine Islands

v. Olutanga Lumber Co., 47 Phil. 20; Manila Trading & Supply Co. v. Tamaraw Plantation Co., 47 Phil. 513.)

The case of Pascual, as cited by the respondent court, is not applicable in this instant case because it was a case of sale on installment, where after foreclosure of the units the plaintiffs-guarantors who had likewise executed a real estate mortgage of up to P50,000, cannot be held answerable anymore for the deficiency. The conclusion therefore reached by the lower court was erroneous because in the case at bar, the obligation contracted by the principal debtor (Depositario) with a solidary co-maker (private respondent herein), was one of loan secured by a chattel mortgage, executed by the principal debtor, and not a sale where the price is payable on installments and where a chattel mortgage on the thing sold was constituted by the buyer and, further, the obligation to pay the installments having been guaranteed by another.

Private respondent Guinhawa contends that he was not a party to the chattel mortgage executed by Depositario but merely a co-maker on the promissory note executed by the latter and therefore cannot be held liable for the deficiency.

Under Article 1216 of the Civil Code, the creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected. And therefore, where the private respondent binds himself solidarily with the principal debtor to pay the latter's debt, he may be proceeded against by the principal debtor. Private respondent as solidary co-maker is also a surety (Art. 2047) and that under the law, the bringing of an action against the principal debtor to enforce the payment of the obligation is not inconsistent with, and does not preclude, the bringing of another action to compel the surety to fulfill his obligation under the agreement.

Article 2080[2] of the Civil Code which is relied on by private respondent has no application to the case at bar since his liability here is as a surety not as a guarantor.

WHEREFORE, the appealed decision dated October 12, 1982 is hereby REVERSED and SET ASIDE and the decision of the City Court dated December 4, 1981 is hereby REINSTATED. Costs against the private respondent.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, and Regalado, JJ., concur.
Sarmiento, J., on leave.

[1] Penned by Judge Antonio N. Gerona

[2] Article 2080 provides:

"The guarantors, even though they be solidary, are released from their obligation whenever by some act of the creditor they cannot be subrogated to the rights, mortgages, and preferences of the latter."

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