

CALTEX PHILIPPINES, INC., PETITIONER, VS. THE INTERMEDIATE APPELLATE COURT AND HERBERT MANZANA, RESPONDENTS.*G.R. No. 74730. August 25, 1989*

Ponente: MEDIALDEA, J.

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This is a petition for review on certiorari of the resolution of respondent Intermediate Appellate Court (now Court of Appeals) dated January 31, 1986 vacating its prior decision dated June 29, 1984 and ordering that the records of the case be remanded to the Court of First Instance (now Regional Trial Court) of Manila, and its resolution dated May 19, 1986 denying the motion for reconsideration.

The antecedent facts are as follows:

Private respondent Herbert Manzana purchased on credit petroleum products from petitioner Caltex Philippines, Inc. (CALTEX, for short). As of August 31, 1969, his indebtedness to CALTEX has amounted to P361,218.66. On October 4, 1969, Manzana executed a Deed of First Mortgage in favor of CALTEX over a parcel of land covered by OCT No. 0-274 of the Register of Deeds for the Province of Camarines Norte to secure his debts to the latter. On various occasions, CALTEX sent to Manzana statements of account and later demanded payment of his entire debts. Because of Manzana's failure and refusal to pay, CALTEX filed a complaint on August 17, 1970 before the trial court for the recovery of the whole amount of P361,218.66.

Meanwhile, on September 15, 1970, CALTEX foreclosed extrajudicially the mortgaged property. On October 30, 1970, the mortgaged property was sold at auction to CALTEX, being the only bidder, for P20,000.00 as shown by the Sheriff's Certificate of Sale. The foreclosure was allegedly known by Manzana only on October 4, 1980 when such fact was manifested by CALTEX in its reply to the opposition of Manzana to the motion for execution pending appeal.

On July 23, 1980, the trial court rendered judgment ordering Manzana to pay CALTEX the amount of P353,218.66 after deducting P8,000.00 paid by Traders Insurance and Surety Company on its surety bond, with interest thereon at 12% per annum from August 17, 1970, plus 20% thereof as attorney's fees (p. 115, Rollo).

Manzana appealed the trial court's decision to the respondent Intermediate Appellate Court raising the following issues (p. 37, Rollo):

"1. THAT PLAINTIFF-APPELLEE CANNOT AVAIL BOTH OF A PERSONAL ACTION (THIS CASE) AND AN EXTRAJUDICIAL FORECLOSURE AT THE SAME TIME AGAINST THE DEFENDANT-APPELLANT; AND,

2. THAT PLAINTIFF-APPELLEE CANNOT AVAIL OF A DEFICIENCY JUDGMENT AFTER HE HAD EXTRAJUDICIALLY FORECLOSED ON THE PROPERTY OF DEFENDANT-APPELLANT."

It was the opinion of the respondent court that "a reading of the issues raised by the defendant-appellant shows that the question that needs resolution is whether or not plaintiff-appellee can still avail of the complaint for the

recovery of the balance of indebtedness after having already foreclosed the property securing the same" (p. 37, Rollo).

On June 29, 1984, the respondent court rendered a decision (pp. 36-39, Rollo) affirming in toto the appealed decision after "finding no reversible error" therein. On July 19, 1984, Manzana filed a motion for reconsideration of said decision. In its comment to the motion for reconsideration, CALTEX prayed that "the judgment sought to be reconsidered be modified by deducting the amount of P20,000.00 (foreclosure amount) from P353,218.66 thereby leaving a balance of P333,218.66 representing the deficiency that plaintiff-appellee is entitled to recover from defendant-appellant plus interest, attorney's fees and costs of suit" (p. 41, Rollo).

Acting on the motion for reconsideration, the respondent court issued a resolution dated January 31, 1986, the dispositive portion of which reads (p. 59, Rollo):

"WHEREFORE, in the interest of justice the decision of this Court promulgated June 29, 1984 is vacated and the records are ordered remanded for purposes of determining the deficiency due the plaintiff-appellee and for the trial court to render another and proper judgment based on the evidence adduced by all the parties. Without pronouncement as to costs.

"SO ORDERED."

The respondent court was convinced that the following consideration justified a reconsideration of its prior decision (pp. 55-56, Rollo): "x x x, the action (before the trial court) cannot be said to be one for recovery of deficiency judgment because x x x (it) seeks recovery of the whole amount of indebtedness totalling P361,210.66" (should be P361,218.66).

The motion for reconsideration filed by CALTEX was denied. Hence, the present petition.

The issues may be limited to the following:

- 1) Whether or not the respondent court committed an error in giving due course to the question whether CALTEX can avail at the same time of a personal action in court for collection of a sum of money and the extrajudicial foreclosure of the deed of first mortgage, which was only raised for the first time on appeal;
- 2) Whether or not the mere filing of a collection suit for the recovery of the debt secured by real estate mortgage constitutes waiver of the other remedy of foreclosure;
- 3) Whether or not the filing of the complaint for recovery of the amount of indebtedness and the subsequent extrajudicial foreclosure of the deed of first mortgage constitutes splitting of a single cause of action.

FIRST ISSUE

CALTEX alleges that the only issue submitted for resolution before the trial court is whether or not Manzana was indebted and liable to it in the sum of P361,218.66. The issue whether or not CALTEX can avail at the same time of a personal action in court for collection of a sum of money and the extrajudicial foreclosure of the Deed of First Mortgage, and the issue whether or not CALTEX can avail of a deficiency judgment were never raised in the pleadings of the parties nor at any stage of the proceedings before the trial court. These were only raised by Manzana for the first time on appeal before the respondent court.

We rule that the respondent court did not commit any error in taking cognizance of the aforesaid issues, although not raised before the trial court. The presence of strong consideration of substantial justice has led this Court to relax the well-entrenched rule that, except questions on jurisdiction, no question will be entertained on appeal unless it has been raised in the court below and it is within the issues made by the parties in their pleadings

(Cordero v. Cabral, G.R. No. L-36789, July 25, 1983, 123 SCRA 532). The compassionate spirit behind this rule will equally apply to the other allegation of CALTEX that Manzana's indebtedness of P361,218.66 was secured up to the extent of P120,000.00 only although it appears that this issue is raised for the first time in this present petition. Thus, the liberal application of the rule will favor both parties.

On the basis of the first condition enumerated in the Deed of First Mortgage, CALTEX submits that Manzana's indebtedness of P361,218.66 was secured up to the extent of P120,000.00 only, to wit (p. 50, Rollo):

"This Mortgage is subject to the following terms and conditions:

"1) The aforementioned indebtedness of THREE HUNDRED SIXTY-ONE THOUSAND TWO HUNDRED EIGHTEEN & 66/100 (P361,218.66) of the MORTGAGOR shall be paid upon demand by the MORTGAGEE; it being expressly understood that the limit or maximum amount secured by this mortgage is ONE HUNDRED TWENTY THOUSAND PESOS (P120,000.00) only."

On the other hand, on the basis of the fourth paragraph of the deed and the fourth condition therein, Manzana contends that the whole outstanding obligation of P361,218.66 was secured by the mortgage, to wit (pp. 49-50, Rollo):

"NOW, THEREFORE, for and in consideration of the said overdue, payable and demandable indebtedness of the MORTGAGOR to the MORTGAGEE in the sum of THREE HUNDRED SIXTY-ONE THOUSAND TWO HUNDRED EIGHTEEN PESOS & 66/100 (P361,218.66), Philippine Currency, the foregoing premises and other x x x and valuable considerations, and to secure the faithful performance by the MORTGAGOR of all the terms and conditions hereinafter set forth, particularly the payment of the obligations hereby secured, the MORTGAGOR does hereby convey BY WAY OF FIRST MORTGAGE x x x.

"x x x.

"4) This mortgage shall remain in force to cover the aforementioned outstanding indebtedness of the MORTGAGOR to the MORTGAGEE in the amount of THREE HUNDRED SIXTY-ONE THOUSAND TWO HUNDRED EIGHTEEN PESOS & 66/100 (P361,218.66)."

Article 1374 of the Civil Code, regarding interpretation of contracts, provides:

"ART. 1374. The various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly."

The Deed of First Mortgage seems to contain provisions that contradict one another. However, considering all the provisions together, the first condition cited by CALTEX is actually a specific provision while the fourth paragraph and the fourth condition cited by Manzana are general provisions. This interpretation is bolstered by the third WHEREAS clause and the penultimate paragraph of the deed, to wit (pp. 49-50, Rollo):

"WHEREAS, the MORTGAGOR has offered to execute, sign and deliver a First Mortgage over his property x x x, only as partial security for the aforementioned overdue, payable and demandable indebtedness of the MORTGAGOR to the MORTGAGEE, which offer of the MORTGAGOR is accepted by the MORTGAGEE. (underscoring supplied)

"x x x.

"The MORTGAGOR binds himself to complete the securities required by the MORTGAGEE and shall permit any authorized representative of the MORTGAGEE to inspect the mortgaged property and all the properties offered to be mortgaged to complete the required security." (underscoring supplied)

We therefore hold that Manzana's indebtedness of P361,218.66 was secured up to the extent of P120,000.00 only.

The records show that CALTEX extended to Manzana a continuing credit line, with the result that each transaction constituted a separate obligation. We affirm the trial court's ruling with respect to the liability of Manzana to CALTEX in the amount of P233,218.66 (P353,218.66 less P120,000.00) with interest thereon at 12% per annum from August 17, 1970, plus 20% thereof as attorney's fees. The evidence on record, both testimonial and documentary, clearly support such amount of indebtedness. The trial court said (pp. 114-115, Rollo):

"Plaintiff's claim that as at (sic) termination of agreement on July 27, 1970, Manzana had an outstanding account totalling P361,218.66, appears to be confirmed by the following:

"(1) On September 8, 1970, defendant Manzana, by a letter, acknowledged his indebtedness, but asked for time to pay the unpaid balance (Exh. "1" and "M").

"(2) To secure his obligation of P361,218.66, said defendant executed, on October 4, 1969, a Deed of First Mortgage on a piece of land covered by O.C.T. No. 0-274 of the Registry of Deeds for Camarines Norte (Exh. "N").

"Rarely can a confirmation of an account be more definitive than the foregoing.

"Defendant Manzana's defenses, set up in his answer, do not appear to have merit. In the first place, the supposed lack of liquidation is belied by the periodical statements of account showing the corresponding running balance thru the years 1968 to 1969 (Exhs. "N" to "0-7" inclusive), effectively constituting a form of liquidation. Secondly, the very terms used repeatedly in the Dealer Agreement -- neither pleaded nor in any manner assailed as ambiguous -- are peculiar to purchase and sale transactions and to the relationship of the parties thereto as debtor and creditor. There is no reasonable way under the provisions thereof that Manzana can be deemed to be either an agent or a mere collector with plaintiff bearing the risk of non-payment."

Furthermore, this case has been pending since August 17, 1970 and to order its remand to the trial court will necessarily entail additional expenses and unduly delay its disposition and the administration of justice to the parties.

Remand of the case to the lower courts for reception of evidence is not necessary if the Supreme Court can resolve the dispute on the records before it. The common denominator in cases holding that remand of a case is not necessary is the fact that the trial court had received all the evidence intended to be presented by both parties (Hechanova v. Court of Appeals, G.R. No. L-48787, November 14, 1986, 145 SCRA 550).

THE SUCCEEDING DISCUSSION WILL CONCERN THE SECURED INDEBTEDNESS OF P120,000.00.

CALTEX, in effect, has made a mockery of our judicial system when it initially filed a collection suit then, during the pendency thereof foreclosed extrajudicially the mortgaged property which secured the indebtedness and still pursued the collection suit to the end. In this light, the actuations of CALTEX are deserving of severe criticism, to say the least. Of importance is the doctrine laid down by this court in the leading case of *Bachrach Motor, Inc. v. Icarañgal, et al.*, 68 Phil. 287, which was applied by the respondent Court in resolving the case, where We ruled that:

"x x x, in the absence of express statutory provisions, a mortgage creditor may institute against the mortgage debtor either a personal action for debt or a real action to foreclose the mortgage. In other words, he may pursue either of the two remedies, but not both. By such election, his cause of action can by no means be impaired, for each of the two remedies is complete in itself. Thus, an election to bring a personal action will leave open to him all the properties of the debtor for attachment and execution, even including the mortgaged property itself. And, if he waives such personal action and pursues his remedy against the mortgaged property, an unsatisfied judgment thereon would still give him the right to sue for a deficiency judgment, in which case, all the properties of the defendant, other than the mortgaged property, are again open to him for the satisfaction

of the deficiency. In either case, his remedy is complete, his cause of action undiminished, and any advantages attendant to the pursuit of one or the other remedy are purely accidental and are all under his right of election.
x x x."

Thus, where a debt is secured by a mortgage and there is a default in payment on the part of the mortgagor, the mortgagee has a choice of one (1) of two (2) remedies, but he cannot have both. The mortgagee may:

- 1) foreclose the mortgage; or
- 2) file an ordinary action to collect the debt.

When the mortgagee chooses the foreclosure of the mortgage as a remedy, he enforces his lien by the sale on foreclosure of the mortgaged property. The proceeds of the sale will be applied to the satisfaction of the debt. With this remedy, he has a prior lien on the property. In case of a deficiency, 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 (*Soriano v. Enriquez*, 24 Phil. 584; *Banco de Islas Filipinas v. Concepcion Hijos*, 53 Phil. 86; *Banco Nacional v. Barreto*, 53 Phil. 101).

On the other hand, if the mortgagee resorts to an action to collect the debt, he thereby waives his mortgage lien. He will have no more priority over the mortgaged property. If the judgment in the action to collect is favorable to him, and it becomes final and executory, he can enforce said judgment by execution. He can even levy execution on the same mortgaged property, but he will not have priority over the latter and there may be other creditors who have better lien on the properties of the mortgagor.

CALTEX submits that the principles enunciated in the *Bachrach* case are not applicable nor determinative of the case at bar for the reason that the factual circumstances obtained in the said case are totally different from the instant case. In the *Bachrach* case, the plaintiff instituted an action to foreclose the mortgage after the money judgment in its favor remained unsatisfied whereas in the present case, CALTEX initially filed a complaint for collection of the debt and during the pendency thereof foreclosed extrajudicially the mortgage.

We disagree. Although the facts in the *Bachrach* case and in the present case are not identical, there is similarity in the fact that the plaintiffs in these two cases availed of both remedies although they are entitled to a choice of only one.

SECOND ISSUE

CALTEX alleges next that the mere act of filing a collection suit for the recovery of a debt secured by real estate mortgage is not tantamount to an implied waiver of the mortgage lien. Under Philippine jurisdiction, there is no statute which prohibits or precludes a mortgagee from subsequently foreclosing the real estate mortgage shortly after the collection suit has been filed. The real estate mortgage itself does not contain any explicit provision that the filing of a collection suit would mean waiver of the remedy of foreclosure.

We hold otherwise. The mere act of filing a collection suit for the recovery of a debt secured by a mortgage constitutes waiver of the other remedy of foreclosure. The rationale behind this was adequately explained in the *Bachrach* case, *supra*:

"x x x, a rule that would authorize the plaintiff to bring a personal action against the debtor and simultaneously or successively another action against the mortgaged property, would result not only in multiplicity of suits so offensive to justice (*Soriano vs. Enriques*, 24 Phil. 584) and obnoxious to law and equity (*Osorio vs. San Agustin*, 25 Phil. 404), but also in subjecting the defendant to the vexation of being sued in the place of his residence or of the residence of the plaintiff, and then again in the place where the property lies."

In the present case, however, We shall not follow this rule to the letter but declare that it is the collection suit which was waived and/or abandoned. This ruling is more in harmony with the principles underlying our judicial system. It is of no moment that the collection suit was filed ahead, what is determinative is the fact that the foreclosure proceedings ended even before the decision in the collection suit was rendered. As a matter of fact, CALTEX informed the trial court that it had already consolidated its ownership over the property, in its reply to the opposition of Manzana to the motion for execution pending appeal filed by it.

A corollary issue that We might as well resolve now (although not raised as an issue in the present petition, but applying the rule in *Gayos, et al. v. Gayos, et al.*, G.R. No. L-27812, September 26, 1975, 67 SCRA 146, that it is a cherished rule of procedure that a court should always strive to settle the entire controversy in a single proceeding leaving no root or branch to bear the seeds of future litigation) is whether or not CALTEX can still sue for a deficiency judgment --- P100,000.00 (secured debt of P120,000.00 less the foreclosure amount of P20,000.00).

The collection suit filed before the trial court cannot be considered as a deficiency judgment because a deficiency judgment has been defined as one for the balance of the indebtedness after applying the proceeds of the sale of the mortgaged property to such indebtedness and is necessarily filed after the foreclosure proceedings. It is significant to note that the judgment rendered by the trial court was for the full amount of the indebtedness and the case was filed prior to the foreclosure proceedings.

In general, a deficiency judgment is in the nature of an ordinary money judgment, may constitute a cause of action and is barred by the statute of limitations applicable to ordinary judgment (59 C.J.S. 1497). The ten (10) year period provided in Articles 1142 and 1144 of the Civil Code applies to a suit for deficiency judgment, to wit:

"Art. 1142. A mortgage action prescribes after ten years. (1964a)"

"Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:

- (1) Upon a written contract;
- (2) Upon an obligation created by law;
- (3) Upon a judgment. (n)"

A suit for the recovery of the deficiency after the foreclosure of a mortgage is in the nature of a mortgage action because its purpose is precisely to enforce the mortgage contract; it is upon a written contract and upon an obligation of Manzana to pay the deficiency which is created by law (see *Development Bank of the Philippines v. Tomeldan, et al.*, G.R. No. 51269, November 17, 1980, 101 SCRA 171). Therefore, since more than ten (10) years have elapsed from the time the right of action accrued, CALTEX can no longer recover the deficiency from Manzana.

THIRD ISSUE

CALTEX has only one cause of action against Manzana, that is, non-payment of the debt although two choices of remedies are available to it. As held in the *Bachrach* case, *supra*:

"For non-payment of a note secured by mortgage, the creditor has a single cause of action against the debtor. This single cause of action consists in the recovery of the credit with execution of the security. In other words, the creditor in his action may make two demands, the payment of the debt and the foreclosure of his mortgage. But both demands arise from the same cause, the non-payment of the debt, and, for that reason, they constitute a single cause of action. Though the debt and the mortgage constitute separate agreements, the latter is subsidiary to the former, and both refer to one and the same obligation. Consequently, there exists only one

cause of action for a single breach of that obligation. Plaintiff, then, by applying the rule above stated, cannot split up his single cause of action by filing a complaint for payment of the debt, and thereafter another complaint for foreclosure of the mortgage. If he does so, the filing of the first complaint will bar the subsequent complaint. By allowing the creditor to file two separate complaint simultaneously or successively, one to recover his credit and another to foreclose his mortgage, we will, in effect, be authorizing him plural redress for a single breach of contract at so much cost to the courts and with so much vexation and oppression to the debtor."

ACCORDINGLY, the resolution of the respondent Intermediate Appellate Court dated January 31, 1986 is SET ASIDE. The decision of the trial court is AFFIRMED with the MODIFICATION that private respondent Herbert Manzana's liability to petitioner Caltex Philippines, Inc. is only up to the extent of P233,218.66 with interest thereon at 12% per annum from August 17, 1970, plus 20% thereof as attorney's fees.

SO ORDERED.

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

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