

**EASTMAN CHEMICAL INDUSTRIES, INC., PETITIONER, VS.
HONORABLE COURT OF APPEALS, BANK OF THE PHILIPPINE
ISLANDS AND THE PROVINCIAL SHERIFF OF RIZAL, RESPONDENTS.**

G.R. No. 76733. June 30, 1989

Ponente: MEDIALDEA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-76733/>

MEDIALDEA, J.:

This petition assails: 1) the decision of the Court of Appeals dated October 27, 1986 insofar as it upheld the validity of the extrajudicial foreclosure sale of petitioner EASTMAN'S mortgaged properties to satisfy EASTMAN'S obligation in the Peroxide Account, and 2) the Resolution dated November 25, 1986, denying EASTMAN'S Motion for Reconsideration.

The facts, as culled from the decision of the Court of Appeals, the court a quo and elsewhere in the records, are summarized as follows:

On November 23, 1973, Eastman Chemical Industries, Inc. (EASTMAN, for short), obtained a loan in the original amount of P1.5 M from the Commercial Bank and Trust Co. [later merged with the Bank of the Philippine Islands (BPI, for brevity)]. The loan was secured by a real estate mortgage constituted on three parcels of land, covered by Transfer Certificates of Title Nos. 402106, 402107 and 233316, all of the Register of Deeds of Rizal. WE shall denominate this loan as the Eastman Account.

The mortgage instrument which was executed to secure the Eastman Account (and thereafter to cover the Peroxide Account) pertinently provides (pp. 30-31, Rollo):

"That for and in consideration of certain loans, overdrafts and other credit accommodations obtained from the mortgagee, which is hereby fixed at ONE MILLION PESOS ONLY (P1,000,000.00), Philippine Currency, and to secure the payment of the same and those others that the mortgagee may extend to the mortgagor, including interest and expenses and other obligations owing by the mortgagor to the mortgagee, whether direct or indirect, principal or secondary, as appear in the accounts, books and records of the mortgagee, the mortgagor does hereby transfer and convey by way of mortgage unto the mortgagee, its successors or assigns, the parcel of lands which are described in the list inserted at the back of this document, or in a supplementary list attached hereto, together with all the buildings and improvements now existing or which may hereafter be erected or constructed thereon . . .

"In case the mortgagor executes subsequent promissory note or notes either as a renewal of the former note, or an extension thereof, or as a new loan, or is given any other kind of accommodations, Trust Receipts, etc., this mortgage shall also stand as security for the payment of the said promissory note or notes and/or accommodations without the necessity of executing a new contract and this mortgage shall have the same force and effect as if the said promissory note or notes and/or accommodations were existing on the date hereof.

"This mortgage shall also stand as security for said obligations and any and all obligations of the mortgagor to the mortgagee of whatever kind and nature such as overdrafts, letters of credit, acceptance, bills of exchange, releases of import shipments, etc, and whether such obligations have been contracted before, during or after the constitution of this mortgage. (Exh. 6, BPI, pp. 36-39, Original Record)."

EASTMAN also has a second account with BPI under a "Continuing Guaranty" contract, whereby it bound itself jointly and severally," with Mr. Edmund Mapua, (General Manager, PPC) on a loan obtained by Peroxide Philippines Corporation (Defendant's Exhibits, p 42, Original Records). WE shall denominate this as the Peroxide Account.

EASTMAN failed to pay its indebtedness on the Eastman Account and BPI initiated foreclosure proceedings against the three mortgaged lots on November 29, 1982, pursuant to Act 3135 (Extra-judicial Foreclosure). Notice of Sheriff's Sale (Annex B to Complaint, pp. 15-16, Original Records; See p. 31, Rollo) was issued on December 4, 1982, announcing the sale at public auction of the mortgaged properties on January 7, 1983 (pp. 32-35, Rollo).

On December 27, 1982, EASTMAN remitted to BPI under protest a check in the amount of P198,000, representing 50% of the amount claimed by BPI, with a request that the auction sale set for January 7, 1983 be postponed to January 30, 1983 to allow a reconciliation of accounts, the same to be finalized before January 30, 1983, with the assurance to BPI that although EASTMAN'S records showed a balance due BPI of only P53,904.44, it would pay the difference if the final outcome of the reconciliation should show otherwise.

On January 4, 1983, BPI and EASTMAN agreed to reset to January 31, 1983 the auction sale, provided that: a) by Friday, January 28, 1983, there shall be finalized a reconciliation of the records of EASTMAN with the Bank records showing the amount due from EASTMAN to the Bank, and payment of the reconciled amount; b) EASTMAN waives any new re-posting and republication of notice of auction sale for January 31, 1983 (Exhibit 4-BPI, p. 40, Original Record).

On January 28, 1983, the last day for payment, BPI gave EASTMAN a statement of the total amount due as of that date in the total sum of P230,340.48 (Paragraph 9, Complaint, p. 4, Original Record). EASTMAN did not pay on January 28, 1983. Instead, on January 31, 1983, EASTMAN'S counsel, Atty. Sta. Ana, went to the BPI offices and tendered a check for P206,308.98, which BPI refused, because the tender was beyond the agreed date (January 28) and that the tender was made in the form of personal not a manager's or cashier's check, which mode is not a valid tender of payment. He then rushed to the office of the Provincial Sheriff of Rizal where the auction sale was scheduled and tendered the same check he had previously offered to BPI. Counsel for BPI refused to accept the check and the objections of Eastman were entered in the minutes of the sale. BPI came out the winning bidder with its bid of P4,171,591.35. Sometime thereafter, 3 cashier's checks totalling P230,346.48 were presented to the Sheriff.

As regards the Peroxide Account, BPI, on December 9, 1982, or after it had sought extra-judicial foreclosure on the Eastman Account on November 23, 1982, filed a complaint with the then Court of First Instance of Rizal in which it sought recovery of a sum of money aggregating P86,000,000.00. Impleaded therein aside from Peroxide Philippines Corporation and the Mapua spouses, was Eastman on the basis of Eastman's solidary obligation to the extent of P31,200,000.00 only. This collection case is still pending decision as Civil Case No. 48849.

After BPI was declared the winning bidder in the auction sale, it submitted a statement of account to the provincial sheriff wherein BPI added the solidary undertaking of Eastman under its Peroxide Account totalling P31,200,000.00, or a total obligation on both the Eastman Account and Peroxide Account, (after adding incidental expenses and fees) of P34,562,758.49. Deducting the bid price of P4,171,591.35 from the total of P34,562,758.49, there remains a deficiency of P30,391,167.14 owing from Eastman and due to BPI.

EASTMAN, filed Civil Case 49412 on February 1, 1983 to annul the auction sale with prayer for Preliminary Injunction (RTC, NCJR, Pasig, Branch 156), (p. 2, Original Records).

On December 1, 1983, the courts a quo^[1] rendered its decision, the dispositive portion of which states as follows:

"WHEREFORE, the extra-judicial foreclosure sale of the mortgaged properties to the defendant bank insofar as it was held to satisfy the indebtedness of the plaintiff under the promissory notes discussed in the body of this decision is upheld for being valid.

"The extra-judicial foreclosure sale of the same properties to the defendant bank in order to satisfy plaintiff's alleged obligation in the so called Peroxide account is annulled and set aside for being invalid. (Decision, p. 14, Original Record)"

Not satisfied therewith, BPI appealed. On October 27, 1986, the Court of Appeals rendered its decision, the dispositive portion of which reads:

"WHEREFORE, the decision is hereby modified in the sense that the second paragraph of the dispositive portion thereof which annulled and set aside the extra-judicial foreclosure sale in order to satisfy a part of the Peroxide Account of Eastman, is hereby reversed. The auction sale is, therefore, declared valid and legal in all respects and the complaint is thus dismissed. Further, in the interest of justice, considering that the auction sale was held on January 31, 1983, or more than 3 years ago, it is hereby ordered that the Sheriffs Certificate of Sale be issued in favor of defendant-appellant Bank of the Philippine Islands, but that plaintiff-appellee Eastman Chemical Industries, Inc. is hereby given a period of thirty (30) days from the finality of this decision within which to redeem the property, taking into account the bid price, interests, expenses, and costs as provided by law; and should no redemption be effected within said period, defendant-appellant may then proceed to consolidate its ownership over the property. (p. 17, decision of the Court of Appeals dated 27 October 86)" (p. 120, Rollo).

EASTMAN'S Motion for Reconsideration of the decision was denied for lack of merit, per Resolution dated November 25, 1980.

Hence this petition.

The issues raised in the petition may be limited to the following:

1. Right of mortgage creditor with respect to the real property mortgaged.
2. Nature/Extent of liability of EASTMAN as a solidary guarantor vis-a-vis its personal obligation in relation to the real estate mortgage provision on "future and other indebtedness."
3. Right of a court to reduce the statutory redemption period to thirty (30) days.

Justice Antonio Barredo, petitioner's counsel, has declared his relationship within the fourth degree by affinity to Justice Segundino Chua, a member of the 7th Division, which rendered the decision, subject of this petition (p.

14, Rollo). He has not, however, specified the exact relationship existing between the two. Under the rules, the relationships must be according to the rules of civil law, as laid down in Art. 966 of the New Civil Code.

At any rate, Justice Barredo has himself admitted that "Justice Chua's participation may not have rendered the decision void, x x x" (p. 17, Rollo), in which case We find no need for resolving the matter of disqualification.

On the first issue, it is clear, and this point is not disputed by the parties, that the three parcels of land mortgaged in favor of BPI served as security for both the Eastman Account and EASTMAN's liability as guarantor in the Peroxide Account, on the basis of the following provisions of the mortgage instrument, which provides in part:

"In case the mortgagor executes subsequent promissory note or notes either as renewed ... or as a new loan, or is given any other kind of accommodations. Trust Receipts, etc., this mortgage shall also stand as security for the payment of the said promissory note or notes and/or accommodations without the necessity of executing a new contract . . ." (supra)

The controversy arose when, even before the actual auction sale for the defaulted Eastman Account, BPI opted to file on December 9, 1982, a separate Civil Case (CC 48849, against Peroxide, EASTMAN and the Mapua spouses, to "recover a sum of money," and, despite the pendency of this case, sought the application of the excess of its bid price (for the mortgaged properties covering the foreclosed Eastman Account) to a portion of the Peroxide Account.

The course of action taken by BPI is without legal basis.

It is settled jurisprudence that with respect to real properties, 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 two remedies, but not both. (Bachrach Motor Inc. vs. Icarangal and Oriental Commercial Co., Inc., 68 Phil. 287; Manila Trading and Supply Co., vs. Co Kim, et al., 78 Phil. 448 [1941]; Monido vs. R.F.C., et al., 105 Phil. 886 [1959]; Danao vs. Court of Appeals, 154 SCRA 446).

In the case of Danao vs. Court of Appeals, G.R. L-48276, September 30, 1987; 154 SCRA 447 at 457, WE explained:

"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 the 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 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 complaints 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 much cost to the courts and with so much vexation and oppression to the debtor.

"xxx 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 v. Enriquez, 24 Phil. 584) and obnoxious to law and equity (Osorio v. 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." (Bachrach Motor Co. Inc. v. Esteban Icarangal, et al., 38 Off. Gaz. 389 [1939].

When BPI applied the excess of its bid price (for the foreclosed Eastman Account) to the Peroxide Account, it, in effect, availed of two remedies: 1) the personal action to recover on its Peroxide Account, or CC 48849; and 2) the foreclosure action on its Eastman Account.

BPI, of course, goes into minute details to uphold their claim that the foreclosure action was limited solely to the Eastman Account, and that BPI merely applied the excess amount of the bid price to the Peroxide Account, which, by virtue of par. (c) of the Eastman mortgage instrument:

"(c) If any time the mortgagor fails to pay or refuse to pay the obligations herein secured or any of its amortizations x x x then all the obligations of the mortgagor secured by this mortgage [which as earlier shown includes the Peroxide Account] shall immediately become due, payable and defaulted and the mortgagee may immediately foreclose this mortgage x x x" (p. 39, Rollo)

had become "due demandable, payable and defaulted" at the time of auction sale on January 31, 1983 (p. 149, Rollo).

This legal rigmarole misses the point. The be-all of BPI's course of action is that BPI had, in fact, availed of two remedies when it simultaneously applied the excess of the bid price to its Peroxide Account, when its civil suit to recover on this account was still pending. How else could there have been an excess on a bid price, unless a foreclosure action had been undertaken?

As aptly stated by petitioner:

"x x x. It is our humble submission that after the filing of Civil Case No. 48849, covering the Peroxide account, to speak yet of the extrajudicial foreclosure sale of January 31, 1983 as including the Peroxide account would be a judicial anachronism. We maintain that a party cannot go to court to collect an obligation, with attachment, and while said action is pending conduct an extra-judicial foreclosure of the mortgage, which secures the obligation already subject of the suit in court. To be clearer, in this particular case, although the mortgage secured two accounts, the Bank foreclosed only one of them, the Eastman account, and chose to make the Peroxide account the subject of a judicial action. We admit Civil Case No. 48849 was not barred by the foreclosure of the Eastman Account, but it is to our mind entirely a juridical error to maintain as the Bank does, that what it bidded in the foreclosure sale could include the account controverted in Civil Case No. 48849. In other words, the bid of over Four Million Pesos, should be deemed as exclusively for the Eastman account, x x x." (Petitioner's Memorandum, p. 187, Rollo)

Viewed in this light, it likewise becomes clear that BPI is obliged to deliver the excess of its P4 M bid price over the ₱260,000.00 of EASTMAN'S foreclosed account to EASTMAN, the owner of the property sold. "The application of the proceeds from the sale of the mortgaged property to the mortgagor's obligation is an act of payment, not payment by dation; hence, it is the mortgagee's duty to return any surplus in the selling price to the mortgagor" (Gorospe vs. Gochangco, 106 Phil. 426).

When BPI initiated foreclosure proceedings in its letter-request dated November 22, 1982 addressed to the Provincial Sheriff of Rizal, it sought extrajudicial foreclosure on the principal amounts due on the Eastman Account "xxx as well as any other amounts owing by said mortgagors x x x" (p. 12, Records) in favor of BPI

additional to and aside from the principal charges. In its Notice of Sheriff's Sale, however, the third whereas clause states:

"WHEREAS, the terms and conditions of the said mortgage contract have been violated due to the mortgagors' failure to pay the amount of indebtedness which as of October 31, 1982, amounts to Six Hundred Fifty Three Thousand Nine Hundred & 82/100 (P653,900.82), with interest and attorney's fees thereon, exclusive of daily interest and expenses, penalties, plus all lawful fees and expenses, all secured by said mortgage." (p. 15, Record) .

indicating that the foreclosure action was limited to the Eastman Account. This was confirmed when BPI filed CC 48849 for the recovery of the amount covered by the Peroxide Account. With the filing of this suit, there was no legal justification for availing of the proceeds of the foreclosure action to satisfy even a portion of that same Peroxide Account, firstly, because a mortgagee as earlier stated is barred from availing of two remedies, and secondly, as pointed out by the trial judge:

"XXX XXX XXX

"2. Until Civil Case No. 48849 (the case filed by BPI against Eastman, Peroxide and the Mapua spouses for the solidary obligation) is decided and the actual liability of Peroxide and of Eastman are adjudicated, 'the alleged indebtedness of the latter in this account cannot be considered settled as to become the basis of an extra-judicial foreclosure proceeding.'" (pp. 34-35, Rollo)

On the basis of the foregoing, respondent court erred in upholding the validity of the foreclosure sale with respect to the Peroxide Account.

As regards the second issue on the nature/extent of EASTMAN'S liability under the "Continuing Guaranty" contract it had executed with respect to Peroxide's loan with BPI, it is premature to pass upon said question because the liability of Peroxide (the borrower) still has to be determined in Civil Case No. 48849.

Petitioner has also questioned the ruling of respondent court ordering the issuance of the Sheriff's Certificate of Sale in favor of BPI and "giving EASTMAN a period of thirty (30) days from the finality of this decision within which to redeem the property x x x and should no redemption be effected within said period; BPI may then proceed to consolidate its ownership over the property" (p. 45, Rollo; italics supplied).

The records of the case show that counsel for both parties in this case agreed not to have a Certificate of Sale issued until the injunctive relief prayed for is resolved in order to preserve the status quo (T.S.N., dated December 12, 1983, Original Records, C.C. 49412, p. 44). The delay in the issuance of the Certificate of Sale cannot thus be attributed to EASTMAN alone which should not thus be unduly prejudiced by limiting its right of redemption to only thirty days, despite the statutory period of one year counted from the registration of the Certificate of Sale.

In the case of Reyes vs. Noblejas and Santos (G.R. No. L-23691, November 25, 1967, 21 SCRA 1027 at pp. 1029-1030) the Supreme Court upheld the contention of the Land Registration Commission, as follows:

"x x x Section 6 of Act 3135 should be applied to the present case together with: (1) Sections 30 to 35 of Rule 39 of the Revised Rules of Court with regard to redemption; (2) Section 27, Rule 39 of the said Rules and Section 71 of Act 496 with regard to the filing (registration) of the sheriffs certificate of sale; and (3) Section

50 of Act 496, with regard to the registration of the certificate of sale so as to consider the land conveyed and affected under the Land Registration Act.

and that

"x x x. Section 27, Rule 39 of the Revised Rules of Court provides that the certificate of sale executed by the sheriff in a public auction sale must be filed (registered) in the Office of the Register of Deeds of the province where the land is situated. This is mandatory requirement. Failure to register the certificate of sale violates the said provision of law and, construed in relation with Section 50 of the Land Registration Law (Act 496), shall not take effect as a conveyance or bind the land covered by a torrens title because 'the act of registration is the operative act to convey and effect the land.' So the redemption period, for purposes of determining the time when a final deed of sale may be executed or issued and the ownership of the registered land consolidated in the purchaser at an extrajudicial foreclosure sale under Act 3135, should be reckoned from the date of registration of the certificate of sale in the office of the register of deeds concerned and not from the date of the public auction sale, xxx."

On the basis of the foregoing, there is clearly, no legal justification for the 30-day redemption period pronounced by respondent court. The period of redemption available to EASTMAN remains to be one-year, counted from the registration of the Sheriffs Certificate of Sale. And until and unless said Certificate of Sale is registered, the one-year period does not begin to run.

ACCORDINGLY, the decision of the Court of Appeals is MODIFIED. That portion of the decision upholding the extrajudicial foreclosure sale of the mortgaged properties of petitioner EASTMAN to satisfy its indebtedness on the EASTMAN account is AFFIRMED; whereas that portion upholding the extrajudicial foreclosure sale of the same properties of EASTMAN in order to satisfy EASTMAN'S guaranteed obligation in the Peroxide Account is ANNULLED AND SET ASIDE for being invalid.

The one-year statutory redemption period is likewise reiterated and emphasized as available to, and exercisable by, EASTMAN. The Court of Appeals' decision limiting the same to thirty (30) days is hereby REVERSED. No costs.

SO ORDERED.

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

[1] Presided over by Hon. Ricardo L. Pronove, Jr. now Associate Justice, Court of Appeals.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.