

BICOL SAVINGS AND LOAN ASSOCIATION, PETITIONER, VS. HON. COURT OF APPEALS, CORAZON DE JESUS, LYDIA DE JESUS, NELIA DE JESUS, JOSE DE JESUS, AND PABLO DE JESUS, RESPONDENTS.

G.R. No. 85302. March 31, 1989

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This Petition for Review on Certiorari was filed by Bicol Savings and Loan Association, seeking the reversal of the Decision* of the respondent Court of Appeals in CA-G.R. CV NO. 02213, dated 11 August 1988, which ruled adversely against it. The pleadings disclose the following factual milieu:

Juan de Jesus was the owner of a parcel of land, containing an area of 6,870 sq. ms., more or less, situated in Naga City. On 31 March 1976, he executed a Special Power of Attorney in favor of his son, Jose de Jesus, "To negotiate, mortgage my real property in any bank either private or public entity preferably in the Bicol Savings Bank, Naga City, in any amount that may be agreed upon between the bank and my attorney-in-fact." (CA Decision, p. 44, Rollo)

By virtue thereof, Jose de Jesus obtained a loan of twenty thousand pesos (P20,000.00) from petitioner bank on 13 April 1976. To secure payment, Jose de Jesus executed a deed of mortgage on the real property referred to in the Special Power of Attorney, which mortgage contract carried, inter alia, the following stipulation:

"b) If at any time the Mortgagor shall refuse to pay the obligations herein secured, or any of the amortizations of such indebtedness when due, or to comply with any of the conditions and stipulations herein agreed....., then all the obligations of the Mortgagor secured by this Mortgage, all the amortizations thereof shall immediately become due, payable and defaulted and the Mortgagee may immediately foreclose this mortgage in accordance with the Rules of Court, or extrajudicially in accordance with Act No. 3135, as amended, or Act No. 1508. For the purpose of extrajudicial foreclosure, the Mortgagor hereby appoints the Mortgagee his attorney-in-fact to sell the property mortgaged....." (CA Decision, pp. 47-48, Rollo)

Juan de Jesus died in the meantime on a date that does not appear of record.

By reason of his failure to pay the loan obligation even during his lifetime, petitioner bank caused the mortgage to be extrajudicially foreclosed on 16 November 1978. In the subsequent public auction, the mortgaged property was sold to the bank as the highest bidder to whom a Provisional Certificate of Sale was issued.

Private respondents herein, including Jose de Jesus, who are all the heirs of the late Juan de Jesus, failed to redeem the property within one year from the date of the registration of the Provisional Certificate of Sale on 21 November 1980. Hence, a Definite Certificate of Sale was issued in favor of the bank on 7 September 1982.

Notwithstanding, private respondents still negotiated with the bank for the repurchase of the property. Offers and counter-offers were made, but no agreement was reached, as a consequence of which, the bank sold the property instead to other parties in installments. Conditional deeds of sale were executed between the bank and these

parties. A Writ of Possession prayed for by the bank was granted by the Regional Trial Court.

On 31 January 1983 private respondents herein filed a Complaint with the then Court of First Instance of Naga City for the annulment of the foreclosure sale or for the repurchase by them of the property. That Court, noting that the action was principally for the annulment of the Definite Deed of Sale issued to petitioner bank, dismissed the case, ruling that the title of the bank over the mortgaged property had become absolute upon the issuance and registration of the said deed in its favor in September 1982. The Trial Court also held that herein private respondents were already guilty of laches by failing to act until 31 January 1983 when they filed the instant Complaint.

On appeal, the Trial Court was reversed by respondent Court of Appeals. In so ruling, the Appellate Court applied Article 1879 of the Civil Code and stated that since the special power to mortgage granted to Jose de Jesus did not include the power to sell, it was error for the lower Court not to have declared the foreclosure proceedings and auction sale held in 1978 null and void because the Special Power of Attorney given by Juan de Jesus to Jose de Jesus was merely to mortgage his property, and not to extrajudicially foreclose the mortgage and sell the mortgaged property in the said extrajudicial foreclosure. The Appellate Court was also of the opinion that petitioner bank should have resorted to judicial foreclosure. A Decision was thus handed down annulling the extrajudicial foreclosure sale, the Provisional and Definite Deeds of Sale, the registration thereof, and the Writ of Possession issued to petitioner bank.

From this ruling, the bank filed this petition to which the Court gave due course.

The pivotal issue is the validity of the extrajudicial foreclosure sale of the mortgaged property instituted by petitioner bank which, in turn, hinges on whether or not the agent-son exceeded the scope of his authority in agreeing to a stipulation in the mortgage deed that petitioner bank could extrajudicially foreclose the mortgaged property.

Article 1879 of the Civil Code, relied on by the Appellate Court in ruling against the validity of the extrajudicial foreclosure sale, reads:

"Art. 1879. A special power to sell excludes the power to mortgage; and a special power to mortgage does not include the power to sell."

We find the foregoing provision inapplicable herein.

The sale proscribed by a special power to mortgage under Article 1879 is a voluntary and independent contract, and not an auction sale resulting from extrajudicial foreclosure, which is precipitated by the default of a mortgagor. Absent that default, no foreclosure results. The stipulation granting an authority to extrajudicially foreclose a mortgage is an ancillary stipulation supported by the same cause or consideration for the mortgage and forms an essential or inseparable part of that bilateral agreement (*Perez v. Philippine National Bank*, No. L-21813, July 30, 1966, 17 SCRA 833, 839).

The power to foreclose is not an ordinary agency that contemplates exclusively the representation of the principal by the agent but is primarily an authority conferred upon the mortgagee for the latter's own protection. That power survives the death of the mortgagor (*Perez vs. PNB*, *supra*). In fact, the right of the mortgagee bank to extrajudicially foreclose the mortgage after the death of the mortgagor Juan de Jesus, acting through his attorney-in-fact, Jose de Jesus, did not depend on the authorization in the deed of mortgage executed by the latter. That right existed independently of said stipulation and is clearly recognized in Section 7, Rule 86 of the Rules of Court, which grants to a mortgagee three remedies that can be alternatively pursued in case the mortgagor dies, to wit: (1) to waive the mortgage and claim the entire debt from the estate of the mortgagor as an ordinary claim; (2)

to foreclose the mortgage judicially and prove any deficiency as an ordinary claim; and (3) to rely on the mortgage exclusively, foreclosing the same at any time before it is barred by prescription, without right to file a claim for any deficiency. It is this right of extrajudicial foreclosure that petitioner bank had availed of, a right that was expressly upheld in the same case of *Perez v. Philippine National Bank* (supra), which explicitly reversed the decision in *Pasno v. Ravina* (54 Phil. 382) requiring a judicial foreclosure in the same factual situation. The Court in the aforesaid PNB case pointed out that the ruling in the Pasno case virtually wiped out the third alternative, which precisely includes extrajudicial foreclosure, a result not warranted by the text of the Rule.

It matters not that the authority to extrajudicially foreclose was granted by an attorney-in-fact and not by the mortgagor personally. The stipulation in that regard, although ancillary, forms an essential part of the mortgage contract and is inseparable therefrom. No creditor will agree to enter into a mortgage contract without that stipulation intended for its protection.

Petitioner bank, therefore, in effecting the extrajudicial foreclosure of the mortgaged property, merely availed of a right conferred by law. The auction sale that followed in the wake of that foreclosure was but a consequence thereof.

WHEREFORE, the Decision of respondent Court of Appeals in CA-G.R. CV No. 02213 is SET ASIDE, and the extrajudicial foreclosure of the subject mortgaged property, as well as the Deeds of Sale, the registration thereof, and the Writ of Possession in petitioner bank's favor, are hereby declared VALID and EFFECTIVE.

SO ORDERED.

Paras, Padilla, Sarmiento, and Regalado, JJ., concur

* Penned by Justice Celso L. Magsino and concurred in by Presiding Justice Oscar R. Victoriano and Justice Luis L. Victor.

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