

PILAR PAGSIBIGAN, PETITIONER, VS. COURT OF APPEALS AND PLANTERS DEVELOPMENT BANK, RESPONDENTS.

G.R. No. 90169. April 07, 1993

Ponente: CAMPOS, JR., J.

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CAMPOS, JR., J.:

This is a petition for review on certiorari of the decision* of the Court of Appeals in CA-G.R. CV No. 18385 entitled “Pilar Pagsibigan, Plaintiff-appellee vs. Planters Development Bank, Defendant-appellant,” the decretal portion of which reads:

“WHEREFORE, the decision appealed from is hereby reversed and another one entered ordering plaintiff-appellee Norma Manalili, to pay the deficiency of P21,391.81. No pronouncement is made as to costs.

“SO ORDERED.”[1]

The undisputed facts are summarized by the respondent court as follows:

“Stripped of non-essentials, it appears that on August 4, 1974, plaintiff-appellee, [petitioner, herein] through her daughter as attorney-in-fact, obtained an agricultural loan from the Planters Development Bank (formerly Bulacan Development Bank), in the sum of P4,500.00 secured by a mortgage over a parcel of land covered by Transfer Certificate of Title No. T?129603 (Exhibit “A”; “A-1”), which loan was later fully paid (Exhibits “B”; “B-1” to “B-3”). Another loan for the same amount was obtained from the bank on November 3, 1977 [year 1977 should read 1976 instead] secured by the same parcel of land. The Promissory Note for the second loan (Exhibit “1”) stipulated that for a first payment to be made on May 3, 1977 and payments every six months thereafter at P1,018.14 with 19% interest for unpaid amortizations. The said Promissory Note, containing an acceleration clause (Exhibit “1-A”), was not denied by plaintiff-appellee [petitioner] (TSN, December 10, 1986, pp. 9-10).

Initial payment was made on July 6, 1978 [year 1978 should read 1977 instead] followed by several payments in the total amount of P11,900.00 (Exhibits “D”; “D-1” to “D-7”). However, only four of these payments were applied to the loan (TSN, March 16, 1987, pp. 14-16), while the rest were “temporarily lodged to accounts payable since the account was already past due” (TSN, June 1, 1987, pp. 15-16). On the basis of a Petition for Extrajudicial Foreclosure of Mortgage (Exhibit “6”) and the statement of Account (Exhibit “12”), the property was foreclosed extrajudicially on May 7, 1984 for failure to pay an outstanding balance of P29,554.81 (Exhibit “13”). This resulted in the property being sold to the bank for P8,163.00, and the bank thereafter claimed a deficiency of P21,391.81.

In the action for annulment of sale with damages and writ of preliminary injunction instituted by plaintiff-appellee, the lower court sustained appellee’s [petitioner] theory of overpayment (Decision, p. 3), as against the propriety of the foreclosure.”[2] [Bracketed words Ours].

Petitioner submits the following issues for resolution:

“1. Whether or not the foreclosure and auction sale of the property is valid and justified under the

circumstances; and

2. Whether or not petitioner is entitled to recover damages as well as attorney's fees as a result of the foreclosure and auction sale.”[3]

It is petitioner's contention that the bank has no right to foreclose the mortgage, there having been full payment of the principal obligation. As per their computation[4] the payment which they have made totalling P11,900.00 more than sufficiently covered their total obligation with respect to their loan, there having been, in fact, an overpayment of either P4,642.38 or P6,106.75 based on the interest rate used in the computation. Thus, the principal obligation having been extinguished by payment, the accessory obligation of mortgage is necessarily extinguished, and the foreclosure thereof is improper and not valid.

The respondent bank on the other hand countered that the computation relied upon by petitioner is not in consonance with the Promissory Note[5] which she signed because the Promissory Note contains an acceleration clause. Respondent bank also averred that upon petitioner's failure to pay her first installment, the entire obligation became due and demandable and its right to foreclose the mortgage has accrued. Thus, when it foreclosed the mortgage in 1984, with the outstanding obligation at P29,554.81, it was acting well within its rights.

We note at this point that the respondent bank does not dispute the fact that petitioner had made several payments in an amount totalling to P11,900.00. It likewise admits that only part of the amount tendered was applied to the loan and the bulk of such payment was “temporarily lodged to accounts payable since the account was already past due”[6] [Underlining Ours]. Petitioner assails the respondent bank for not applying her payment to the loan. Because of said act, the loan remained outstanding when it should have been extinguished and should have also extinguished the accessory contract of real estate mortgage.

Petitioner wants Us to rule not only on the regularity or legality of the foreclosure but also on its propriety in the light of the attending circumstances.

There is no question that the respondent bank has the right to foreclose the mortgage upon the first default of petitioner on May 3, 1977, but the records show that it did not. When it received payment of petitioner on July 6, 1977, which had been 2 months and 3 days delayed, it applied P154.80 to the principal, P210.00 to interest, and only P25.20 to penalty. From this act of receiving delayed payment, it is clear that the respondent bank had waived its right under the acceleration clause so that instead of claiming penalty charges on the entire amount of P4,500.00, it only computed the penalty based on the defaulted amortization payment which is P1,018.14. If it computed the penalty charge at 19% of the entire amount of P4,500.00 which would have been due and demandable by virtue of the acceleration clause, the penalty charges would be much more than P25.20.

This is similarly observed in payments which the respondent bank received on June 6, 1978 and August 26, 1978. We also noticed that in Exhibit “D-3”, the receipt which the respondent bank issued to petitioner for the August 26, 1978 partial payment, it waived its right under Article 1253[7] of the Civil Code on Application of Payments when it applied the payment to the principal instead of the interest. Thus, on that date the outstanding obligation of petitioner was already reduced to P3,558.21 after she had paid a total of P2,200.00 over a period of nine months from the time the loan was obtained.

From this conduct of the respondent bank it is clear that it neither enforced its right under the acceleration clause nor its right to foreclose under the mortgage contract. For more than four years, the respondent bank made petitioner believe that it was applying her payment on the loan and interest just like before when the respondent bank accepted such payment and issued a receipt therefor. It is bound by estoppel to apply the same as payment for petitioner's obligation as it did when it received previous payments on three occasions. Its act of applying said

payments to accounts payable is clearly prejudicial to petitioner. We cannot countenance this act of the bank.

We hold that the payment amounting to P8,650.00 for the balance of P3,558.20 as of August 26, 1978[8] plus the P1,000.00 it was asked to pay on April 24, 1984 would at the very least constitute substantial performance.

Article 1234 of the Civil Code, provides:

“Article 1234. If the obligation has been substantially performed in good faith, the obligor may recover as though there had been a strict and complete fulfillment, less damages suffered by the obligee.”

Petitioner in this case has the right to move for the cancellation of the mortgage and the release of the mortgaged property, upon payment of the balance of the loan. Definitely, it would not be in the amount demanded by the respondent bank, which the trial court held to be P29,554.81.

This Court, in *Angeles vs. Calasanz*[9] held that:

“The breach of the contract adverted to by the defendants-appellants is so slight and casual when we consider that apart from the initial downpayment of P392.00 the plaintiffs-appellees had already paid the monthly installments for a period of almost nine (9) years. In other words, in only a short time, the entire obligation would have been paid. Furthermore, although the principal obligation was only P3,920.00 excluding the 7 percent interests, the plaintiffs-appellees had already paid an aggregate amount of P4,533.38. To sanction the rescission made by the defendants-appellants will work injustice to the plaintiffs-appellees. It would unjustly enrich the defendants-appellants.

Article 1234 of the Civil Code which provides that:

x x x x x

also militates against the unilateral act of the defendants-appellants in cancelling the contract.”

Thus, aside from the fact that the respondent bank was estopped from enforcing its right to foreclose by virtue of its acceptance of the delayed payments for a period of more than six years, the application of such payment to the interest and the principal during the first three payments constitutes a virtual waiver of the acceleration clause provided in the contract. We cannot sustain the legality of the foreclosure under the peculiar facts of this case, because there is substantial performance of the obligation on the part of petitioner. Under Article 1235 of the Civil Code, when the creditor accepts performance, knowing its incompleteness and irregularity without protest or objection, the obligation is deemed complied with.

This Court cannot ignore the fact that the respondent bank succeeded in taking advantage of the ignorance of petitioner in transactions such as the one involved in the case at bar by lodging the bulk of petitioner’s payment to account payable based on the flimsy reason that she had been in default, and then considering the entire debt pursuant to an acceleration clause as earning interest and penalty charges at an exorbitant rate of 19% each from the date of first default up to the date of foreclosure, thus bringing the obligation to an astronomical amount of P29,554.81. This indicates bad faith on the part of the respondent bank. For the mental anguish, sleepless nights and serious anxiety this has caused petitioner, the respondent bank is liable for moral damages which this Court fixes at P50,000.00.

To serve as a deterrent for the respondent bank from repeating similar acts and to set an example and correction for the public good, this Court likewise awards exemplary damages. In view of its nature, it should be imposed in such amount as to sufficiently and effectively deter similar acts in the future[10] by the respondent bank and other banks, which amount this court fixes at P20,000.00 on top of the forfeiture of whatever balance on the loan which the respondent may actually have in its favor.

This Court likewise orders the annulment of the foreclosure sale and the reconveyance of the property subject of the real estate mortgage pursuant to the annotation of lis pendens in the certificate of title of the subject property.

Attorney's fees by way of damages is likewise awarded for the same reason that exemplary damages is awarded and this is fixed at P10,000.00.

WHEREFORE, the appealed decision is hereby SET ASIDE and a new one entered ordering the reconveyance of the foreclosed property and the payment of moral damages, exemplary damages and attorney's fees as above specified, with costs against private respondent Planters Development Bank.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Nocon, JJ., concur.

* Penned by Associate Justice Jose A.R. Melo; concurred in by Associate Justices Ricardo L. Pronove, Jr. and Alfredo L. Benipayo.

[1] Decision, p. 5, Rollo, p. 33.

[2] Ibid., pp. 29-30.

[3] Rollo, p. 15.

[4] Exhibits "H-2" and "H-3".

[5] Exhibit "1".

[6] TSN, June 1, 1987, pp. 15-16.

[7] CIVIL CODE, Art. 1253. If the debt produces interest, payment of the principal shall not be deemed to have been made until the interests have been covered.

[8] Exhibit "D-3".

[9] 135 SCRA 323 (1985), citing J.M. Tuazon and Co., Inc. vs. Javier, 31 SCRA 829 (1970).

[10] Lopez vs. Pan American World Airways, 16 SCRA 431 (1966).

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