

SECOND DIVISION

[G.R. No. 133876, December 29, 1999]

BANK OF AMERICA, NT AND SA, PETITIONER, VS. AMERICAN REALTY CORPORATION AND COURT OF APPEALS, RESPONDENTS.

D E C I S I O N

BUENA, J.:

Does a mortgage-creditor waive its remedy to foreclose the real estate mortgage constituted over a third party mortgagor's property situated in the Philippines by filing an action for the collection of the principal loan before foreign courts?

Sought to be reversed in the instant petition for review on certiorari under Rule 45 of the Rules of Court are the decision^[1] of public respondent Court of Appeals in CA G.R. CV No. 51094, promulgated on 30 September 1997 and its resolution,^[2] dated 22 May 1998, denying petitioner's motion for reconsideration.

Petitioner Bank of America NT & SA (BANTSA) is an international banking and financing institution duly licensed to do business in the Philippines, organized and existing under and by virtue of the laws of the State of California, United States of America while private respondent American Realty Corporation (ARC) is a domestic corporation.

Bank of America International Limited (BAIL), on the other hand, is a limited liability company organized and existing under the laws of England.

As borne by the records, BANTSA and BAIL on several occasions granted three major multi-million United States (US) Dollar loans to the following corporate borrowers: (1) Liberian Transport Navigation, S.A.; (2) El Challenger S.A. and (3) Eshley Compania Naviera S.A. (hereinafter collectively referred to as "borrowers"), all of which are existing under and by virtue of the laws of the Republic of Panama and are foreign affiliates of private respondent.^[3]

Due to the default in the payment of the loan amortizations, BANTSA and the corporate borrowers signed and entered into restructuring agreements. As additional security for the restructured loans, private respondent ARC as third party mortgagor executed two real estate mortgages,^[4] dated 17 February 1983 and 20 July 1984, over its parcels of land including improvements thereon, located at Barrio Sto. Cristo, San Jose Del Monte, Bulacan, and which are covered by Transfer Certificate of Title Nos. T-78759, T-78760, T-78761, T-78762 and T-78763.

Eventually, the corporate borrowers defaulted in the payment of the restructured

loans prompting petitioner BANTSA to file civil actions^[5] before foreign courts for the collection of the principal loan, to wit:

"a) In England, in its High Court of Justice, Queen's Bench Division, Commercial Court (1992-Folio No. 2098) against Liberian Transport Navigation S.A., Eshley Compania Naviera S.A., El Challenger S.A., Espriona Shipping Company S.A., Eddie Navigation Corp., S.A., Eduardo Katipunan Litonjua and Aurelio Katipunan Litonjua on June 17, 1992.

b) In England, in its High Court of Justice, Queen's Bench Division, Commercial Court (1992-Folio No. 2245) against El Challenger S.A., Espriona Shipping Company S.A., Eduardo Katipuan Litonjua & Aurelio Katipunan Litonjua on July 2, 1992;

c) In Hongkong, in the Supreme Court of Hongkong High Court (Action No. 4039 of 1992) against Eshley Compania Naviera S.A., El Challenger S.A., Espriona Shipping Company S.A. Pacific Navigators Corporation, Eddie Navigation Corporation S.A., Litonjua Chartering (Edyship) Co., Inc., Aurelio Katipunan Litonjua, Jr. and Eduardo Katipunan Litonjua on November 19, 1992; and

d) In Hongkong, in the Supreme Court of Hongkong High Court (Action No. 4040 of 1992) against Eshley Compania Naviera S.A., El Challenger S.A., Espriona Shipping Company, S.A., Pacific Navigators Corporation, Eddie Navigation Corporation S.A., Litonjua Chartering (Edyship) Co., Jr. and Eduardo Katipunan Litonjua on November 21, 1992."

In the civil suits instituted before the foreign courts, private respondent ARC, being a third party mortgagor, was not impleaded as party-defendant.

On 16 December 1992, petitioner BANTSA filed before the Office of the Provincial Sheriff of Bulacan, Philippines, an application for extrajudicial foreclosure^[6] of real estate mortgage.

On 22 January 1993, after due publication and notice, the mortgaged real properties were sold at public auction in an extrajudicial foreclosure sale, with Integrated Credit and Corporation Services Co. (ICCS) as the highest bidder for the sum of Twenty Four Million Pesos (P24,000,000.00).^[7]

On 12 February 1993, private respondent filed before the Pasig Regional Trial Court, Branch 159, an action for damages^[8] against the petitioner, for the latter's act of foreclosing extrajudicially the real estate mortgages despite the pendency of civil suits before foreign courts for the collection of the principal loan.

In its answer^[9] petitioner alleged that the rule prohibiting the mortgagee from foreclosing the mortgage after an ordinary suit for collection has been filed, is not applicable in the present case, claiming that:

"a) The plaintiff, being a mere third party mortgagor and not a party to the principal restructuring agreements, was never made a party defendant in the civil cases filed in Hongkong and England;

"b) There is actually no civil suit for sum of money filed in the Philippines since the civil actions were filed in Hongkong and England. As such, any decisions (sic) which may be rendered in the abovementioned courts are not (sic) enforceable in the Philippines unless a separate action to enforce the foreign judgments is first filed in the Philippines, pursuant to Rule 39, Section 50 of the Revised Rules of Court.

"c) Under English Law, which is the governing law under the principal agreements, the mortgagee does not lose its security interest by filing civil actions for sums of money."

On 14 December 1993, private respondent filed a motion for suspension^[10] of the redemption period on the ground that "it cannot exercise said right of redemption without at the same time waiving or contradicting its contentions in the case that the foreclosure of the mortgage on its properties is legally improper and therefore invalid."

In an order^[11] dated 28 January 1994, the trial court granted the private respondent's motion for suspension after which a copy of said order was duly received by the Register of Deeds of Meycauayan, Bulacan.

On 07 February 1994, ICCS, the purchaser of the mortgaged properties at the foreclosure sale, consolidated its ownership over the real properties, resulting to the issuance of Transfer Certificate of Title Nos. T-18627, T-186272, T-186273, T-16471 and T-16472 in its name.

On 18 March 1994, after the consolidation of ownership in its favor, ICCS sold the real properties to Stateland Investment Corporation for the amount of Thirty Nine Million Pesos (P39,000,000.00).^[12] Accordingly, Transfer Certificate of Title Nos. T-187781(m), T-187782(m), T-187783(m), T-16653P(m) and T-16652P(m) were issued in the latter's name.

After trial, the lower court rendered a decision^[13] in favor of private respondent ARC dated 12 May 1993, the decretal portion of which reads:

"WHEREFORE, judgment is hereby rendered declaring that the filing in foreign courts by the defendant of collection suits against the principal debtors operated as a waiver of the security of the mortgages. Consequently, the plaintiff's rights as owner and possessor of the properties then covered by Transfer Certificates of Title Nos. T-78759, T-78762, T-78763, T-78760 and T-78761, all of the Register of Deeds of Meycauayan, Bulacan, Philippines, were violated when the defendant caused the extrajudicial foreclosure of the mortgages constituted thereon.

"Accordingly, the defendant is hereby ordered to pay the plaintiff the following sums, all with legal interest thereon from the date of the filing of the complaint up to the date of actual payment:

"1) Actual or compensatory damages in the amount of Ninety Nine Million Pesos (P99,000,000.00);

"2) Exemplary damages in the amount of Five Million Pesos (P5,000,000.00); and

"3) Costs of suit.

"SO ORDERED."

On appeal, the Court of Appeals affirmed the assailed decision of the lower court prompting petitioner to file a motion for reconsideration which the appellate court denied.

Hence, the instant petition for review^[14] on certiorari where herein petitioner BANTSA ascribes to the Court of Appeals the following assignment of errors:

1. The Honorable Court of Appeals disregarded the doctrines laid down by this Hon. Supreme Court in the cases of ***Caltex Philippines, Inc. vs. Intermediate Appellate Court*** docketed as G.R. No. 74730 promulgated on August 25, 1989 and ***Philippine Commercial International Bank vs. IAC***, 196 SCRA 29 (1991 case), although said cases were duly cited, extensively discussed and specifically mentioned, as one of the issues in the assignment of errors found on page 5 of the decision dated September 30, 1997.

2. The Hon. Court of Appeals acted with grave abuse of discretion when it awarded the private respondent actual and exemplary damages totalling P171,600,000.00, as of July 12, 1998 although such huge amount was not asked nor prayed for in private respondent's complaint, is contrary to law and is totally unsupported by evidence (sic).

In fine, this Court is called upon to resolve two main issues:

1. Whether or not the petitioner's act of filing a collection suit against the principal debtors for the recovery of the loan before foreign courts constituted a waiver of the remedy of foreclosure.
2. Whether or not the award by the lower court of actual and exemplary damages in favor of private respondent ARC, as third-party mortgagor, is proper.

The petition is bereft of merit.

First, as to the issue of availability of remedies, petitioner submits that a waiver of the remedy of foreclosure requires the concurrence of two requisites: an ordinary civil action for collection should be filed and subsequently a final judgment be correspondingly rendered therein.

According to petitioner, the mere filing of a personal action to collect the principal loan does not suffice; a final judgment must be secured and obtained in the personal action so that waiver of the remedy of foreclosure may be appreciated. To put it differently, absent any of the two requisites, the mortgagee-creditor is deemed not to have waived the remedy of foreclosure.

We do not agree.

Certainly, this Court finds petitioner's arguments untenable and upholds the jurisprudence laid down in **Bachrach**^[15] and similar cases adjudicated thereafter, thus:

"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. On the other hand, 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 **Danao vs. Court of Appeals**,^[16] this Court, reiterating jurisprudence enunciated in **Manila Trading and Supply Co. vs. Co Kim**^[17] and **Movido vs. RFC**,^[18] invariably held:

"x x x The rule is now settled that a mortgage creditor may elect to waive his security and bring, instead, an ordinary action to recover the indebtedness with the right to execute a judgment thereon on all the properties of the debtor, including the subject matter of the mortgage x x x, subject to the qualification that if he fails in the remedy by him elected, he cannot pursue further the remedy he has waived.
(Underscoring Ours)

Anent real properties in particular, the Court has laid down the rule that a mortgage creditor may institute against the mortgage debtor either a personal action for debt or a real action to foreclose the mortgage.^[19]

In our jurisdiction, the remedies available to the mortgage creditor are deemed alternative and not cumulative. Notably, an election of one remedy operates as a waiver of the other. For this purpose, a remedy is deemed chosen upon the filing of the suit for collection or upon the filing of the complaint in an action for foreclosure of mortgage, pursuant to the provision of Rule 68 of the 1997 Rules of Civil Procedure. As to extrajudicial foreclosure, such remedy is deemed elected by the