



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

HEIRS OF THE LATE SPOUSES
FLAVIANO MAGLASANG and
SALUD ADAZA-MAGLASANG,
namely, OSCAR A.
MAGLASANG, EDGAR A.
MAGLASANG, CONCEPCION
CHONA A. MAGLASANG,
GLENDA A. MAGLASANG-
ARNAIZ,
LERMA A. MAGLASANG,
FELMA A. MAGLASANG, FE
DORIS A. MAGLASANG,
LEOLINO A. MAGLASANG,
MARGIE LEILA A.
MAGLASANG, MA. MILALIE A.
MAGLASANG, SALUD A.
MAGLASANG, and MA.
FLASALIE A. MAGLASANG,
REPRESENTING THE ESTATES
OF THEIR AFORE-NAMED
DECEASED PARENTS,

Petitioners,

- versus -

MANILA BANKING
CORPORATION, now substituted
by FIRST SOVEREIGN ASSET
MANAGEMENT [SPV-AMC],
INC. [FSAMI],

Respondent.

G.R. No. 171206

Present:

CARPIO, J., Chairperson,
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, JJ.

Promulgated:

SEP 23 2013

X-----X

DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*¹ are the Decision² dated July 20, 2005 and Resolution³ dated January 4, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 50410 which dismissed petitioners' appeal and affirmed the Decision⁴ dated April 6, 1987 of the Regional Trial Court of Ormoc City, Branch 12 (RTC) directing petitioners to jointly and severally pay respondent Manila Banking Corporation the amount of ₱434,742.36, with applicable interests, representing the deficiency of the former's total loan obligation to the latter after the extra-judicial foreclosure of the real estate mortgage subject of this case, including attorney's fees and costs of suit.

The Facts

On June 16, 1975, spouses Flaviano and Salud Maglasang (Sps. Maglasang) obtained a credit line from respondent⁵ in the amount of ₱350,000.00 which was secured by a real estate mortgage⁶ executed over seven of their properties⁷ located in Ormoc City and the Municipality of Kananga, Province of Leyte.⁸ They availed of their credit line by securing loans in the amounts of ₱209,790.50 and ₱139,805.83 on October 24, 1975 and March 15, 1976, respectively,⁹ both of which becoming due and demandable within a period of one year. Further, the parties agreed that the said loans would earn interest at 12% per annum (p.a.) and an additional 4% penalty would be charged upon default.¹⁰

After Flaviano Maglasang (Flaviano) died intestate on February 14, 1977, his widow Salud Maglasang (Salud) and their surviving children, herein petitioners Oscar (Oscar), Concepcion Chona, Lerma, Felma, Fe Doris, Leolino, Margie Leila, Ma. Milalie, Salud and Ma. Flasalie, all surnamed Maglasang, and Glenda Maglasang-Arnaiz, appointed¹¹ their brother petitioner Edgar Maglasang (Edgar) as their attorney-in-fact.¹² Thus, on March 30, 1977, Edgar filed a verified petition for letters of administration of the intestate estate of Flaviano before the then Court of First Instance of Leyte, Ormoc City, Branch 5 (probate court), docketed as Sp. Proc. No. 1604-0.¹³ On August 9, 1977, the probate court issued an Order¹⁴ granting the petition, thereby appointing Edgar as the administrator¹⁵ of Flaviano's estate.

¹ *Rollo*, pp. 3-25.

² *Id.* at 39-50. Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Vicente L. Yap and Enrico A. Lanzas, concurring.

³ *Id.* at 52-53.

⁴ *Id.* at 71-76. Penned by Judge Francisco C. Pedrosa.

⁵ *Id.* at 401-402. Now substituted in these proceedings by First Sovereign Asset Management (SPV-AMC), Inc. (FSAMI). See Resolution dated October 4, 2010.

⁶ *Id.* at 54-55.

⁷ *Id.* at 56-57.

⁸ *Id.* at 6 and 40.

⁹ *Id.* at 7.

¹⁰ *Id.* at 40-41.

¹¹ Records, pp. 325-327. See Bill of Exhibits and Minutes.

¹² *Rollo*, p. 97.

¹³ *Id.* at 41.

¹⁴ CA *rollo*, pp. 146-147. Penned by Judge Numeriano G. Estenzo.

In view of the issuance of letters of administration, the probate court, on August 30, 1977, issued a Notice to Creditors¹⁶ for the filing of money claims against Flaviano's estate. Accordingly, as one of the creditors of Flaviano, respondent notified¹⁷ the probate court of its claim in the amount of ₱382,753.19 as of October 11, 1978, exclusive of interests and charges.

During the pendency of the intestate proceedings, Edgar and Oscar were able to obtain several loans from respondent, secured by promissory notes¹⁸ which they signed.

In an Order¹⁹ dated December 14, 1978 (December 14, 1978 Order), the probate court terminated the proceedings with the surviving heirs executing an extra-judicial partition of the properties of Flaviano's estate. The loan obligations owed by the estate to respondent, however, remained unsatisfied due to respondent's certification that Flaviano's account was undergoing a restructuring. Nonetheless, the probate court expressly recognized the rights of respondent under the mortgage and promissory notes executed by the Sps. Maglasang, specifically, its "right to foreclose the same within the statutory period."²⁰

In this light, respondent proceeded to extra-judicially foreclose the mortgage covering the Sps. Maglasang's properties and emerged as the highest bidder at the public auction for the amount of ₱350,000.00.²¹ There, however, remained a deficiency on Sps. Maglasang's obligation to respondent. Thus, on June 24, 1981, respondent filed a suit to recover the deficiency amount of ₱250,601.05 as of May 31, 1981 against the estate of Flaviano, his widow Salud and petitioners, docketed as Civil Case No. 1998-0.²²

The RTC Ruling and Subsequent Proceedings

After trial on the merits, the RTC (formerly, the probate court)²³ rendered a Decision²⁴ on April 6, 1987 directing the petitioners to pay respondent, jointly and severally, the amount of ₱434,742.36 with interest at the rate of 12% p.a., plus a 4% penalty charge, reckoned from September 5, 1984 until fully paid.²⁵ The RTC found that it was shown, by a

¹⁵ Id. at 148.

¹⁶ Id. at 149.

¹⁷ Records, p. 344. See Bill of Exhibits and Minutes.

¹⁸ Id. at 328-342.

¹⁹ Id. at 346.

²⁰ Id. at 344.

²¹ *Rollo*, p. 42.

²² Id.

²³ Ibid.

²⁴ Id. at 71-76.

²⁵ Id. at 76.

preponderance of evidence, that petitioners, after the extra-judicial foreclosure of all the properties mortgaged, still have an outstanding obligation in the amount and as of the date as above-stated. The RTC also found in order the payment of interests and penalty charges as above-mentioned as well as attorney's fees equivalent to 10% of the outstanding obligation.²⁶

Dissatisfied, petitioners elevated the case to the CA on appeal, contending,²⁷ *inter alia*, that the remedies available to respondent under Section 7, Rule 86 of the Rules of Court (Rules) are alternative and exclusive, such that the election of one operates as a waiver or abandonment of the others. Thus, when respondent filed its claim against the estate of Flaviano in the proceedings before the probate court, it effectively abandoned its right to foreclose on the mortgage. Moreover, even on the assumption that it has not so waived its right to foreclose, it is nonetheless barred from filing any claim for any deficiency amount.

During the pendency of the appeal, Flaviano's widow, Salud, passed away on July 25, 1997.²⁸

The CA Ruling

In a Decision²⁹ dated July 20, 2005, the CA denied the petitioners' appeal and affirmed the RTC's Decision. At the outset, it pointed out that the probate court erred when it, through the December 14, 1978 Order, closed and terminated the proceedings in Sp. Proc. No. 1604-0 without first satisfying the claims of the creditors of the estate – in particular, respondent – in violation of Section 1, Rule 90 of the Rules.³⁰ As a consequence, respondent was not able to collect from the petitioners and thereby was left with the option of foreclosing the real estate mortgage.³¹ Further, the CA held that Section 7, Rule 86 of the Rules does not apply to the present case since the same does not involve a mortgage made by the administrator over any property belonging to the estate of the decedent.³² According to the CA, what should apply is Act No. 3135³³ which entitles respondent to claim the deficiency amount after the extra-judicial foreclosure of the real estate mortgage of Sps. Maglasang's properties.³⁴

²⁶ Id.

²⁷ *Rollo*, p. 43.

²⁸ Id. at 10.

²⁹ Id. at 39-50.

³⁰ Id. at 45-46.

³¹ Id. at 46.

³² Id.

³³ "AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES." Effective March 6, 1924.

³⁴ *Rollo*, pp. 46-49.

Petitioners' motion for reconsideration was subsequently denied in a Resolution³⁵ dated January 4, 2006. Hence, the present recourse.

The Issue Before the Court

The essential issue in this case is whether or not the CA erred in affirming the RTC's award of the deficiency amount in favor of respondent.

Petitioners assert³⁶ that it is not Act No. 3135 but Section 7, Rule 86 of the Rules which applies in this case. The latter provision provides alternative and exclusive remedies for the satisfaction of respondent's claim against the estate of Flaviano.³⁷ Corollarily, having filed its claim against the estate during the intestate proceedings, petitioners argue that respondent had effectively waived the remedy of foreclosure and, even assuming that it still had the right to do so, it was precluded from filing a suit for the recovery of the deficiency obligation.³⁸

Likewise, petitioners maintain that the extra-judicial foreclosure of the subject properties was null and void, not having been conducted in the capital of the Province of Leyte in violation of the stipulations in the real estate mortgage contract.³⁹ They likewise deny any personal liability for the loans taken by their deceased parents.⁴⁰

The Court's Ruling

The petition is partly meritorious.

Claims against deceased persons should be filed during the settlement proceedings of their estate.⁴¹ Such proceedings are primarily governed by special rules found under Rules 73 to 90 of the Rules, although rules governing ordinary actions may, as far as practicable, apply suppletorily.⁴² Among these special rules, Section 7, Rule 86 of the Rules (Section 7, Rule 86) provides the rule in dealing with secured claims against the estate:

SEC. 7. Mortgage debt due from estate. – A creditor holding a claim against the deceased secured by a mortgage or other collateral security, may abandon the security and prosecute his claim in the manner

³⁵ Id. at 52-53.

³⁶ Id. at 214.

³⁷ Id. at 11-14.

³⁸ Id. at 14-18.

³⁹ Id. at 18-20.

⁴⁰ Id. at 22-24.

⁴¹ See *Metropolitan Bank & Trust Company v. Absolute Management Corporation*, G.R. No. 170498, January 9, 2013, 688 SCRA 225, 237.

⁴² Section 2, Rule 72 of the Rules provides:

SEC. 2. *Applicability of rules of civil actions.* — In the absence of special provisions, the rules provided for in ordinary actions shall be, as far as practicable, applicable in special proceedings.

provided in this rule, and share in the general distribution of the assets of the estate; or he may foreclose his mortgage or realize upon his security, by action in court, making the executor or administrator a party defendant, and if there is a judgment for a deficiency, after the sale of the mortgaged premises, or the property pledged, in the foreclosure or other proceeding to realize upon the security, he may claim his deficiency judgment in the manner provided in the preceding section; or he may rely upon his mortgage or other security alone, and foreclose the same at any time within the period of the statute of limitations, and in that event he shall not be admitted as a creditor, and shall receive no share in the distribution of the other assets of the estate; but nothing herein contained shall prohibit the executor or administrator from redeeming the property mortgaged or pledged, by paying the debt for which it is held as security, under the direction of the court, if the court shall adjudged it to be for the best interest of the estate that such redemption shall be made. (Emphasis and underscoring supplied)

As the foregoing generally speaks of “[a] creditor holding a claim against the deceased secured by a mortgage or other collateral security” as above-highlighted, it may be reasonably concluded that the aforementioned section covers all secured claims, whether by mortgage or any other form of collateral, which a creditor may enforce against the estate of the deceased debtor. On the contrary, nowhere from its language can it be fairly deducible that the said section would – as the CA interpreted – narrowly apply only to mortgages made by the administrator over any property belonging to the estate of the decedent. To note, mortgages of estate property executed by the administrator, are also governed by Rule 89 of the Rules, captioned as “Sales, Mortgages, and Other Encumbrances of Property of Decedent.”

In this accord, it bears to stress that the CA’s reliance on *Philippine National Bank v. CA*⁴³ (*PNB*) was misplaced as the said case did not, in any manner, limit the scope of Section 7, Rule 86. It only stated that the aforesaid section equally applies to cases where the administrator mortgages the property of the estate to secure the loan he obtained.⁴⁴ Clearly, the pronouncement was a ruling of inclusion and not one which created a distinction. It cannot, therefore, be doubted that it is Section 7, Rule 86 which remains applicable in dealing with a creditor’s claim against the mortgaged property of the deceased debtor, as in this case, as well as mortgages made by the administrator, as that in the *PNB* case.

Jurisprudence breaks down the rule under Section 7, Rule 86 and explains that the secured creditor has three remedies/options that he may alternatively adopt for the satisfaction of his indebtedness. In particular, he may choose to: (a) waive the mortgage and claim the entire debt from the estate of the mortgagor as an ordinary claim; (b) foreclose the mortgage judicially and prove the deficiency as an ordinary claim; and (c) rely on the mortgage exclusively, or other security and foreclose the same before it is

⁴³ 412 Phil. 807 (2001).

⁴⁴ See id. at 812-815.

barred by prescription, without the right to file a claim for any deficiency.⁴⁵ It must, however, be emphasized that these remedies are distinct, independent and mutually exclusive from each other; thus, the election of one effectively bars the exercise of the others. With respect to real properties, the Court in *Bank of America v. American Realty Corporation*⁴⁶ pronounced:

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 mortgage creditor upon filing of the petition not with any court of justice but with the Office of the Sheriff of the province where the sale is to be made, in accordance with the provisions of Act No. 3135, as amended by Act No. 4118.⁴⁷ (Emphasis supplied)

Anent the third remedy, it must be mentioned that the same includes the option of extra-judicially foreclosing the mortgage under Act No. 3135, as availed of by respondent in this case. However, the plain result of adopting the last mode of foreclosure is that the creditor waives his right to recover any deficiency from the estate.⁴⁸ These precepts were discussed in the *PNB* case, citing *Perez v. Philippine National Bank*⁴⁹ which overturned the earlier *Pasno v. Ravina* ruling:⁵⁰

Case law now holds that this rule grants to the mortgagee three distinct, independent and mutually exclusive remedies that can be alternatively pursued by the mortgage creditor for the satisfaction of his credit in case the mortgagor dies, among them:

- (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.*

In *Perez v. Philippine National Bank*, reversing *Pasno vs. Ravina*, we held:

The ruling in *Pasno v. Ravina* not having been reiterated in any other case, we have carefully reexamined the same, and after mature deliberation have reached the conclusion that the dissenting opinion is

⁴⁵ Id. at 814.

⁴⁶ 378 Phil. 1279 (1999).

⁴⁷ Id. at 1291.

⁴⁸ Id. at 1289-1304.

⁴⁹ 124 Phil. 260 (1966).

⁵⁰ 54 Phil. 378 (1990).

more in conformity with reason and law. Of the three alternative courses that section 7, Rule 87 (now Rule 86), offers the mortgage creditor, to wit, (1) to waive the mortgage and claim the entire debt from the estate of the mortgagor as an ordinary claim; (2) 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*, the majority opinion in *Pasno v. Ravina*, in requiring a judicial foreclosure, virtually wipes out the third alternative conceded by the Rules to the mortgage creditor, and *which would precisely include extra-judicial foreclosures* by contrast with the second alternative.

The plain result of adopting the last mode of foreclosure is that the creditor waives his right to recover any deficiency from the estate. Following the Perez ruling that the third mode includes extrajudicial foreclosure sales, the result of extrajudicial foreclosure is that the creditor waives any further deficiency claim. x x x.⁵¹
(Emphases and underscoring supplied; italics in the original)

To obviate any confusion, the Court observes that the operation of Act No. 3135 does not entirely discount the application of Section 7, Rule 86, or vice-versa. Rather, the two complement each other within their respective spheres of operation. On the one hand, Section 7, Rule 86 lays down the options for the secured creditor to claim against the estate and, according to jurisprudence, the availment of the third option bars him from claiming any deficiency amount. On the other hand, after the third option is chosen, the procedure governing the manner in which the extra-judicial foreclosure should proceed would still be governed by the provisions of Act No. 3135. Simply put, Section 7, Rule 86 governs the parameters and the extent to which a claim may be advanced against the estate, whereas Act No. 3135 sets out the specific procedure to be followed when the creditor subsequently chooses the third option – specifically, that of extra-judicially foreclosing real property belonging to the estate. The application of the procedure under Act No. 3135 must be concordant with Section 7, Rule 86 as the latter is a special rule applicable to claims against the estate, and at the same time, since Section 7, Rule 86 does not detail the procedure for extra-judicial foreclosures, the formalities governing the manner of availing of the third option – such as the place where the application for extra-judicial foreclosure is filed, the requirements of publication and posting and the place of sale – must be governed by Act No. 3135.

In this case, respondent sought to extra-judicially foreclose the mortgage of the properties previously belonging to Sps. Maglasang (and now, their estates) and, therefore, availed of the third option. Lest it be misunderstood, it did not exercise the first option of directly filing a claim against the estate, as petitioners assert, since it merely notified⁵² the probate court of the outstanding amount of its claim against the estate of Flaviano

⁵¹ *Philippine National Bank v. CA*, supra note 43, at 814-815.

⁵² Records, p. 344. See Bill of Exhibits and Minutes.

and that it was currently restructuring the account.⁵³ Thus, having unequivocally opted to exercise the third option of extra-judicial foreclosure under Section 7, Rule 86, respondent is now precluded from filing a suit to recover any deficiency amount as earlier discussed.

As a final point, petitioners maintain that the extra-judicial foreclosure of the subject properties was null and void since the same was conducted in violation of the stipulation in the real estate mortgage contract stating that the auction sale should be held in the capital of the province where the properties are located, *i.e.*, the Province of Leyte.

The Court disagrees.

As may be gleaned from the records, the stipulation under the real estate mortgage⁵⁴ executed by Sps. Maglasang which fixed the place of the foreclosure sale at Tacloban City lacks words of exclusivity which would bar any other acceptable fora wherein the said sale may be conducted, to wit:

It is hereby agreed that in case of foreclosure of this mortgage under Act 3135, the auction sale shall be held at the capital of the province if the property is within the territorial jurisdiction of the province concerned, or shall be held in the city if the property is within the territorial jurisdiction of the city concerned; x x x.⁵⁵

Case law states that absent such qualifying or restrictive words to indicate the exclusivity of the agreed forum, the stipulated place should only be as an additional, not a limiting venue.⁵⁶ As a consequence, the stipulated venue and that provided under Act No. 3135 can be applied alternatively.

⁵³ To note, petitioners did not file a claim against the estate since its notice deviates from the proper characterization under Section 9, Rule 86 of the Rules of Court which sets forth the manner through which a claim against the estate may be filed, to wit:

SEC. 9. *How to file a claim. Contents thereof. Notice to executor or administrator.* – A claim may be filed **by delivering the same with the necessary vouchers to the clerk of court and by serving a copy thereof on the executor or administrator. If the claim be founded on a bond, bill, note, or any other instrument, the original need not be filed, but a copy thereof with all indorsements shall be attached to the claim and filed therewith.** On demand, however, of the executor or administrator, or by order of the court or judge, the original shall be exhibited, unless it be lost or destroyed, in which case the claimant must accompany his claim with affidavit or affidavits containing a copy or particular description of the instrument and stating its loss or destruction. **When the claim is due, it must be supported by affidavit stating the amount justly due, that no payments have been made thereon which are not credited,** and that there are no offsets to the same, to the knowledge of the affiant. If the claim is not due, or is contingent, when filed, it must also be supported by affidavit stating the particulars thereof. When the affidavit is made by a person other than the claimant, he must set forth therein the reason why it is not made by the claimant. The claim once filed shall be attached to the record of the case in which the letters testamentary or of administration were issued, although the court, in its discretion, and as a matter of convenience, may order all the claims to be collected in a separate folder. (Emphases supplied)

⁵⁴ *Rollo*, pp. 54-55.

⁵⁵ *Id.* at 55.

⁵⁶ “[T]he doctrine that absent qualifying or restrictive words, the venue shall either be that stated in the law or rule governing the action or the one agreed in the contract, was applied to an extra-judicial foreclosure sale under Act No. 3135.” (*Auction in Malinta, Inc. v. Luyaben*, 544 Phil. 500, 505 [2007].)

In particular, Section 2 of Act No. 3135 allows the foreclosure sale to be done within the province where the property to be sold is situated, *viz.*:

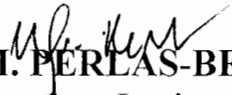
SEC. 2. Said sale cannot be made legally *outside of the province* which the property sold is situated; and in case the place within said province in which the sale is to be made is subject to stipulation, such sale shall be made in said place or in the municipal building of the municipality in which the property or part thereof is situated. (Italics supplied)

In this regard, since the auction sale was conducted in Ormoc City, which is within the territorial jurisdiction of the Province of Leyte, then the Court finds sufficient compliance with the above-cited requirement.

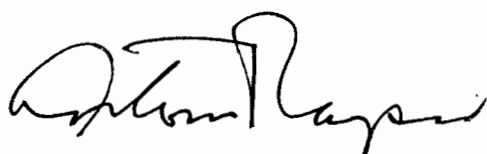
All told, finding that the extra-judicial foreclosure subject of this case was properly conducted in accordance with the formalities of Act No. 3135, the Court upholds the same as a valid exercise of respondent's third option under Section 7, Rule 86. To reiterate, respondent cannot, however, file any suit to recover any deficiency amount since it effectively waived its right thereto when it chose to avail of extra-judicial foreclosure as jurisprudence instructs.

WHEREFORE, the petition is **PARTLY GRANTED**. The complaint for the recovery of the deficiency amount after extra-judicial foreclosure filed by respondent Manila Banking Corporation is hereby **DISMISSED**. The extra-judicial foreclosure of the mortgaged properties, however, stands.

SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



ARTURO D. BRION
Associate Justice



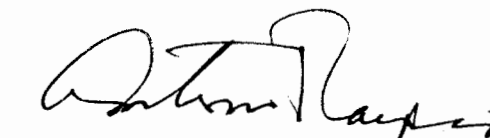
MARIANO C. DEL CASTILLO
Associate Justice



JOSE PORTUGAL BEREZ
Associate Justice

ATTESTATION

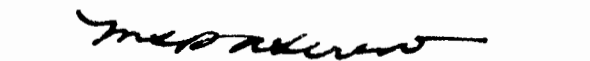
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice