

## SECOND DIVISION

**[ G.R. No. 171206, September 23, 2013 ]**

**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 MAGLASANG, AND MA. FLASALIE A. MAGLASANG, REPRESENTING THE ESTATES OF THEIR AFORE-NAMED DECEASED PARENTS, PETITIONERS, VS. MANILA BANKING CORPORAT ON, NOW SUBSTITUTED BY FIRST SOVEREIGN ASSET MANAGEMENT [SPV-AMC], INC. [FSAMI], RESPONDENT.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>[1]</sup> are the Decision<sup>[2]</sup> dated July 20, 2005 and Resolution<sup>[3]</sup> dated January 4, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 50410 which dismissed petitioners' appeal and affirmed the Decision<sup>[4]</sup> 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 P434,742.36, 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 respondent<sup>[5]</sup> in the amount of P350,000.00 which was secured by a real estate mortgage<sup>[6]</sup> executed over seven of their properties<sup>[7]</sup> located in Ormoc City and the Municipality of Kananga, Province of Leyte.<sup>[8]</sup> They availed of their credit line by securing loans in the amounts of P209,790.50 and P139,805.83 on October 24, 1975 and March 15, 1976, respectively,<sup>[9]</sup> 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.<sup>[10]</sup>

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, appointed<sup>[11]</sup> their brother petitioner Edgar Maglasang (Edgar) as their attorney-in-fact.<sup>[12]</sup> 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.<sup>[13]</sup> On August 9, 1977, the probate court issued an Order<sup>[14]</sup> granting the petition, thereby appointing Edgar as the administrator<sup>[15]</sup> of Flaviano's estate.

In view of the issuance of letters of administration, the probate court, on August 30, 1977, issued a Notice to Creditors<sup>[16]</sup> for the filing of money claims against Flaviano's estate. Accordingly, as one of the creditors of Flaviano, respondent notified<sup>[17]</sup> the probate court of its claim in the amount of P382,753.19 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 notes<sup>[18]</sup> which they signed.

In an Order<sup>[19]</sup> 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."<sup>[20]</sup>

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 P350,000.00.<sup>[21]</sup> 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 P250,601.05 as of May 31, 1981 against the estate of Flaviano, his widow Salud and petitioners, docketed as Civil Case No. 1998-0.<sup>[22]</sup>

### **The RTC Ruling and Subsequent Proceedings**

After trial on the merits, the RTC (formerly, the probate court)<sup>[23]</sup> rendered a Decision<sup>[24]</sup> on April 6, 1987 directing the petitioners to pay respondent, jointly and severally, the amount of P434,742.36 with interest at the rate of 12% p.a., plus a 4% penalty charge, reckoned from September 5, 1984 until fully paid.<sup>[25]</sup> The RTC found that it was shown, by a 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.<sup>[26]</sup>

Dissatisfied, petitioners elevated the case to the CA on appeal, contending,<sup>[27]</sup> *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.<sup>[28]</sup>

### **The CA Ruling**

In a Decision<sup>[29]</sup> 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.<sup>[30]</sup> 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.<sup>[31]</sup> 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.<sup>[32]</sup> According to the CA, what should apply is Act No. 3135<sup>[33]</sup> which entitles respondent to claim the deficiency amount after the extra-judicial foreclosure of the real estate mortgage of Sps. Maglasang's properties.<sup>[34]</sup>

Petitioners' motion for reconsideration was subsequently denied in a Resolution<sup>[35]</sup> 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 assert<sup>[36]</sup> 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.<sup>[37]</sup> 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.<sup>[38]</sup>

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.<sup>[39]</sup> They likewise deny any personal liability for the loans taken by their deceased parents.<sup>[40]</sup>

### **The Court's Ruling**

The petition is partly meritorious.

Claims against deceased persons should be filed during the settlement proceedings of their estate.<sup>[41]</sup> 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.<sup>[42]</sup>

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 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*<sup>[43]</sup> (*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.<sup>[44]</sup> 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 barred by prescription, without the right to file a claim for any deficiency.<sup>[45]</sup> 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*<sup>[46]</sup> 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.<sup>[47]</sup> (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.<sup>[48]</sup> These precepts were discussed in the *PNB* case, citing *Perez v. Philippine National Bank*<sup>[49]</sup> which overturned the earlier *Pasno v. Ravina* ruling.<sup>[50]</sup>

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