

SECOND DIVISION

[G.R. No. 183984, April 13, 2011]

ARTURO SARTE FLORES, PETITIONER, VS. SPOUSES ENRICO L. LINDO, JR. AND EDNA C. LINDO, RESPONDENTS.

DECISION

CARPIO, J.:

The Case

Before the Court is a petition for review^[1] assailing the 30 May 2008 Decision^[2] and the 4 August 2008 Resolution^[3] of the Court of Appeals in CA-G.R. SP No. 94003.

The Antecedent Facts

The facts, as gleaned from the Court of Appeals' Decision, are as follows:

On 31 October 1995, Edna Lindo (Edna) obtained a loan from Arturo Flores (petitioner) amounting to P400,000 payable on 1 December 1995 with 3% compounded monthly interest and 3% surcharge in case of late payment. To secure the loan, Edna executed a Deed of Real Estate Mortgage^[4] (the Deed) covering a property in the name of Edna and her husband Enrico (Enrico) Lindo, Jr. (collectively, respondents). Edna also signed a Promissory Note^[5] and the Deed for herself and for Enrico as his attorney-in-fact.

Edna issued three checks as partial payments for the loan. All checks were dishonored for insufficiency of funds, prompting petitioner to file a Complaint for Foreclosure of Mortgage with Damages against respondents. The case was raffled to the Regional Trial Court of Manila, Branch 33 (RTC, Branch 33) and docketed as Civil Case No. 00-97942.

In its 30 September 2003 Decision,^[6] the RTC, Branch 33 ruled that petitioner was not entitled to judicial foreclosure of the mortgage. The RTC, Branch 33 found that the Deed was executed by Edna without the consent and authority of Enrico. The RTC, Branch 33 noted that the Deed was executed on 31 October 1995 while the Special Power of Attorney (SPA) executed by Enrico was only dated 4 November 1995.

The RTC, Branch 33 further ruled that petitioner was not precluded from recovering the loan from Edna as he could file a personal action against her. However, the RTC, Branch 33 ruled that it had no jurisdiction over the personal action which should be filed in the place where the plaintiff or the defendant resides in accordance with Section 2, Rule 4 of the Revised Rules on Civil Procedure.

Petitioner filed a motion for reconsideration. In its Order^[7] dated 8 January 2004, the RTC, Branch 33 denied the motion for lack of merit.

On 8 September 2004, petitioner filed a Complaint for Sum of Money with Damages against respondents. It was raffled to Branch 42 (RTC, Branch 42) of the Regional Trial Court of Manila, and docketed as Civil Case No. 04-110858.

Respondents filed their Answer with Affirmative Defenses and Counterclaims where they admitted the loan but stated that it only amounted to P340,000. Respondents further alleged that Enrico was not a party to the loan because it was contracted by Edna without Enrico's signature. Respondents prayed for the dismissal of the case on the grounds of improper venue, res judicata and forum-shopping, invoking the Decision of the RTC, Branch 33. On 7 March 2005, respondents also filed a Motion to Dismiss on the grounds of res judicata and lack of cause of action.

The Decision of the Trial Court

On 22 July 2005, the RTC, Branch 42 issued an Order^[8] denying the motion to dismiss. The RTC, Branch 42 ruled that res judicata will not apply to rights, claims or demands which, although growing out of the same subject matter, constitute separate or distinct causes of action and were not put in issue in the former action. Respondents filed a motion for reconsideration. In its Order^[9] dated 8 February 2006, the RTC, Branch 42 denied respondents' motion. The RTC, Branch 42 ruled that the RTC, Branch 33 expressly stated that its decision did not mean that petitioner could no longer recover the loan petitioner extended to Edna.

Respondents filed a Petition for Certiorari and Mandamus with Prayer for a Writ of Preliminary Injunction and/or Temporary Restraining Order before the Court of Appeals.

The Decision of the Court of Appeals

In its 30 May 2008 Decision, the Court of Appeals set aside the 22 July 2005 and 8 February 2006 Orders of the RTC, Branch 42 for having been issued with grave abuse of discretion.

The Court of Appeals ruled that while the general rule is that a motion to dismiss is interlocutory and not appealable, the rule admits of exceptions. The Court of Appeals ruled that the RTC, Branch 42 acted with grave abuse of discretion in denying respondents' motion to dismiss.

The Court of Appeals ruled that under Section 3, Rule 2 of the 1997 Rules of Civil Procedure, a party may not institute more than one suit for a single cause of action. If two or more suits are instituted on the basis of the same cause of action, the filing of one on a judgment upon the merits in any one is available ground for the dismissal of the others. The Court of Appeals ruled that on a nonpayment of a note secured by a mortgage, the creditor has a single cause of action against the debtor, that is recovery of the credit with execution of the suit. Thus, the creditor may institute two alternative remedies: either a personal action for the collection of debt or a real action to foreclose the mortgage, but not both. The Court of Appeals ruled

that petitioner had only one cause of action against Edna for her failure to pay her obligation and he could not split the single cause of action by filing separately a foreclosure proceeding and a collection case. By filing a petition for foreclosure of the real estate mortgage, the Court of Appeals held that petitioner had already waived his personal action to recover the amount covered by the promissory note.

Petitioner filed a motion for reconsideration. In its 4 August 2008 Resolution, the Court of Appeals denied the motion.

Hence, the petition before this Court.

The Issue

The sole issue in this case is whether the Court of Appeals committed a reversible error in dismissing the complaint for collection of sum of money on the ground of multiplicity of suits.

The Ruling of this Court

The petition has merit.

The rule is that a mortgage-creditor has a single cause of action against a mortgagor-debtor, that is, to recover the debt.^[10] The mortgage-creditor has the option of either filing a personal action for collection of sum of money or instituting a real action to foreclose on the mortgage security.^[11] An election of the first bars recourse to the second, otherwise there would be multiplicity of suits in which the debtor would be tossed from one venue to another depending on the location of the mortgaged properties and the residence of the parties.^[12]

The two remedies are alternative and each remedy is complete by itself.^[13] If the mortgagee opts to foreclose the real estate mortgage, he waives the action for the collection of the debt, and *vice versa*.^[14] The Court explained:

x x x 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 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 v. Enriques*, 24 Phil. 584) and obnoxious to law and equity (*Osorio v. 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.^[15]

The Court has ruled that if a creditor is allowed to file his separate complaints simultaneously or successively, one to recover his credit and another to foreclose his mortgage, he will, in effect, be authorized plural redress for a single breach of contract at so much costs to the court and with so much vexation and oppressiveness to the debtor.^[16]

In this case, however, there are circumstances that the Court takes into consideration.

Petitioner filed an action for foreclosure of mortgage. The RTC, Branch 33 ruled that petitioner was not entitled to judicial foreclosure because the Deed of Real Estate Mortgage was executed without Enrico's consent. The RTC, Branch 33 stated:

All these circumstances certainly conspired against the plaintiff who has the burden of proving his cause of action. On the other hand, said circumstances tend to support the claim of defendant Edna Lindo that her husband did not consent to the mortgage of their conjugal property and that the loan application was her personal decision.

Accordingly, since the Deed of Real Estate Mortgage was executed by defendant Edna Lindo lacks the consent or authority of her husband Enrico Lindo, the Deed of Real Estate Mortgage is void pursuant to Article 96 of the Family Code.

This does not mean, however, that the plaintiff cannot recover the P400,000 loan plus interest which he extended to defendant Edna Lindo. He can institute a personal action against the defendant for the amount due which should be filed in the place where the plaintiff resides, or where the defendant or any of the principal defendants resides at the election of the plaintiff in accordance with Section 2, Rule 4 of the Revised Rules on Civil Procedure. This Court has no jurisdiction to try such personal action.^[17]

Edna did not deny before the RTC, Branch 33 that she obtained the loan. She claimed, however, that her husband did not give his consent and that he was not aware of the transaction.^[18] Hence, the RTC, Branch 33 held that petitioner could still recover the amount due from Edna through a personal action over which it had no jurisdiction.

Edna also filed an action for declaratory relief before the RTC, Branch 93 of San