

## FIRST DIVISION

[ G.R. No. 118408, May 14, 1997 ]

**THE ABACA CORPORATION OF THE PHILIPPINES REPRESENTED  
BY THE BOARD OF LIQUIDATORS, PETITIONER, VS. MARTIN O.  
GARCIA, AND THE COURT OF APPEALS, RESPONDENTS.  
D E C I S I O N**

**BELLOSILLO, J.:**

THE ABACA CORPORATION OF THE PHILIPPINES (ABACORP), in this petition for review on *certiorari* pursuant to Rule 45 of the Rules of Court, seeks the reversal of the Decision of respondent Court of Appeals in CA-G.R. No. CV-204104 promulgated 30 June 1994 as well as its Resolution of 19 December 1994 denying reconsideration thereof, and praying for the reinstatement of the Decision of the Regional Trial Court - Br. 10, Legaspi City, dated 29 November 1988 holding that -

Defendant ABACORP or the Board of Liquidators is allowed to proceed with foreclosure proceedings and auction sale of all the 26 parcels of plaintiff included in this case, based on the new balance which includes legal interests, newspaper publication and sheriff's fee.

Plaintiff is further ordered to reimburse defendant ABACORP, through the Board of Liquidators, the litigation expenses of P30,224.22 representing the travel expense of the different lawyers who came to Legaspi to attend to this case.<sup>[1]</sup>

The evidence shows that on 25 September 1961 private respondent Martin O. Garcia was granted a loan of P25,000.00 by ABACORP. To secure payment of his obligation Garcia executed a promissory note and a real estate mortgage<sup>[2]</sup> over his twenty-six (26) parcels of land in favor of ABACORP. Garcia defaulted in his payments hence ABACORP initiated extrajudicial foreclosure proceedings. The public auction however was suspended on several occasions upon request of Garcia. But, despite several accommodations, Garcia still failed to pay. Hence ABACORP initiated anew extrajudicial foreclosure and public auction sale wherein ABACORP emerged as the sole and winning bidder. Before a certificate of sale could be issued in favor of ABACORP, Garcia filed a complaint for Annulment of Sale with Injunction and Damages<sup>[3]</sup> with the Regional Trial Court of Legaspi City.

The Decision of the trial court not being satisfactory to respondent Garcia, he appealed to the Court of Appeals which reversed the court a quo -

1. Declaring null and void the auction sale of the subject properties on December 2, 1991 (should be 1971);
2. Ordering herein defendants to desist from further proceeding with the extrajudicial foreclosure and auction sale of all the twenty-six (26) parcels of land and particularly from issuing and registering the

certificate of sale with the Register of Deeds of Albay in favor of defendant-appellee mortgagee ABACA CORPORATION OF THE PHILIPPINES.<sup>[4]</sup>

Contending that the Decision of the Court of Appeals is contrary to law, ABACORP now comes to us with these assigned errors: (a) Respondent Court of Appeals seriously erred when it concluded in its questioned Decision that Sec. 21, Rule 39, of the Revised Rules of Court on execution sale is applicable in the present case; (b) Respondent Court of Appeals seriously erred when it set aside the sale due to alleged inadequacy of the bid price; and, (c) Having had the opportunity to correct the glaring error committed in its questioned Decision, respondent Court of Appeals seriously erred in denying petitioner's motion for reconsideration of 19 December 1994.<sup>[5]</sup>

We find merit in the petition. There are three (3) types of sales arising from failure to pay a mortgage debt, namely, the extrajudicial foreclosure sale, the judicial foreclosure sale and the ordinary execution sale. These in turn are governed by three (3) different laws. Act No. 3135 governs extrajudicial foreclosure sale, Rule 68 of the Rules of Court deals with judicial foreclosure sale, while Rule 39 covers ordinary execution sale. Act No. 3135 or An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgage applies to the case at bar.

In the Real Estate Mortgage executed by respondent Garcia on 25 October 1961 it was provided that Act No. 3135 was to be applied and ABACORP was particularly designated as attorney-in-fact. Thus -

That if at any time the mortgagor shall fail or refuse to pay the obligations herein secured, or to comply with any of the conditions and stipulations herein agreed, or shall during the time this mortgage is in force, institute insolvency proceedings or involuntarily declared insolvent, or shall use the proceeds of this loan for purposes other than those specified herein or if this mortgage cannot be recorded in the corresponding Registry of Deeds, then all the obligations of the mortgagor secured by this mortgage shall immediately become due, payable and defaulted and the mortgagee may immediately foreclose this mortgage judicially in accordance with the Rules of Court or extrajudicially in accordance with the Act No. 3135 as amended and under Act 2612 as amended.

That it is the essence of this contract that effective upon the breach of any condition of this mortgage and in addition to the remedies herein stipulated, the mortgagee is hereby likewise appointed Attorney-in-fact of the mortgagor with full powers and authority, with the use of force, if necessary, to take actual possession of the mortgaged property without the necessity of any judicial order or any permission or power, to collect rents, to eject tenants, to lease or sell the mortgaged property, or any part thereof, at a private sale without previous notice or advertisement of any kind and execute the corresponding bills of sale, lease or other agreement that may be deemed convenient and perform any other act which the mortgagee may deem convenient for the proper administration of the mortgaged property. <sup>[6]</sup>