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Securities - Application of Antideficiency Judgment Statute to Second Purchase Money Trust Deed Where Security is Exhausted by Foreclosure of First Deed

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SECURITIES—APPLICATION OF ANTIDEFICIENCY JUDGMENT STATUTE TO SECOND PURCHASE MONEY TRUST DEED WHERE SECURITY IS EXHAUSTED BY FORECLOSURE OF FIRST DEED—To secure the purchase price of land, defendant executed a promissory note and first deed of trust in favor of a savings and loan association, and a second note and deed in favor of plaintiff-vendor. On default of both obligations, the savings and loan association foreclosed upon the land.

The resulting sale completely exhausted the security, and plaintiff brought the present action upon his note. Defendant interposed section 580b of the California Code of Civil Procedure, which specifies that "no deficiency judgment shall lie in any event after any sale of real property for failure of the purchaser to complete his [secured obligation], given to secure payment of the balance of the purchase price of real property."[1] The trial court and the court of appeals[2] found the statute inapplicable. On appeal, *held*, reversed. A creditor is barred by the antideficiency judgment statute where foreclosure of a prior purchase money claim has consumed the security, even though no foreclosure sale has taken place under the second trust deed. *Brown v. Jensen*, (Cal. 1953) 259 P. (2d) 425.

If the plaintiff in the principal case had pursued the foreclosure remedy, the California statute clearly would have precluded a deficiency judgment.[3] The essential issue of this case is whether a secured purchase money creditor can avoid that limitation by proceeding on the note to enforce the personal liability of the debtor. A literal reading of the statute might appear to justify the lower courts' finding that it applies only where the trustee or mortgagee has foreclosed.[4] However, it is not unreasonable to suppose that the legislature looked upon foreclosure as the normal method of attack against the debtor in such cases, and therefore intended to abolish completely any personal obligation for purchase money securities.[5] Indeed, another section of the California code dealing generally with secured obligations requires that foreclosure be the first remedy pursued, the so-called "one action" statute.[6] The present decision prevents the junior lienor from waiving the security for which he has contracted and proceeding upon the personal obligation. Are there any special facts which might have justified waiver in this case? Surely the exhaustion of the security by sale under the prior lien cannot be relevant, because if there was no value in the security after foreclosure, there was equally none before.[7] The statute apparently makes no exception in favor of the lienor who has

[1] Cal. Code Civ. Proc. (Deering, 1949) §580b.

[2] Brown v. Jensen, (Cal. App. 1952) 250 P. (2d) 626.

[3] Kerrigan v. Maloof, 98 Cal. App. (2d) 605, 221 P. (2d) 153 (1950).

[4] This reasoning was followed in Hillen v. Soule, 7 Cal. App. (2d) 45, 45 P. (2d) 349 (1935). But see Winkleman v. Sides, 31 Cal. App. (2d) 387, 88 P. (2d) 147 (1939); Mortgage Guarantee Co. v. Sampsell, 51 Cal. App. (2d) 180, 124 P. (2d) 353 (1942).

[5] Such seems to have been the belief of the court in Stone v. Lobsien, 112 Cal. App. (2d) 750, 247 P. (2d) 357 (1952), where it was held that there was no lending of credit in a promise to assume the obligations of a purchase money vendee, because §580b abolished personal liability.

[6] Cal. Code Civ. Proc. (Deering, 1949) §726. An early interpretation of this section denied waiver of the foreclosure remedy where sale under a prior lien had exhausted the security. Barbieri v. Ramelli, 84 Cal. 154, 23 P. 1086 (1890). Later construction permitted suit directly on the bond in such cases, on the ground that the particular mode of entering the deficiency judgment was not important, since the creditor was entitled to one in any event. Savings Bank v. Central Market Co., 122 Cal. 28, 54 P. 273 (1898). Clearly, preserving the "one action" rule does make a difference where the antideficiency prohibitions upon purchase money obligations are involved, so waiver of foreclosure should logically not be permitted in such cases.

[7] A point made clear by Hell v. Schult, 238 Iowa 511, 28 N.W. (2d) 1 (1947).

accepted security which is valueless. If he wished recourse to the personal liability of the debtor, the vendor could have taken an unsecured note. Nevertheless, the result reached in the present case is not universally accepted. Guided by the notion that this type of legislation was designed to protect the debtor only against the creditor who takes the land in partial satisfaction at less than its full value and then seeks to enforce a large deficiency,[8] the courts have frequently avoided the statute as to a creditor who receives no part of the security. North Carolina has a statute which abolishes deficiency judgments in connection with a foreclosure or sale under a power of sale of purchase money mortgages.[9] On facts similar to the principal case, the statutory limitation was held inapplicable on the ground that it was intended to reach only the creditor who came into enjoyment of the property.[10] Alabama, which had a statute allowing the debtor to set off the fair value of the property against the debt in determining a deficiency,[11] found the statute inapplicable to a second lienor who received nothing from the first foreclosure but lost his security thereby, where he was not responsible for the foreclosure.[12] Oregon's predepression statute[13] has been held to prohibit personal liability only where the creditor elects to pursue the foreclosure, but if he does so the provision cannot be avoided by contractual waiver.[14] Conversely, South Dakota has held its courts closed to all actions upon the secured purchase money note.[15] It is aided in this respect by unmistakable statutory language.[16] The early version of the North Dakota statute[17] was held to be procedural only, demanding that the creditor go to law for a deficiency,[18] but an amended act made it clear that creditors on secured obligations could not look beyond the security for satisfaction.[19] The antideficiency judgment acts are intended to protect debtors. They set a limit on the amount for which the debtor can be held liable after losing the land. If this is true, it should be immaterial that the debtor's obligation is divided among liens of different priority. Allowing the junior claimant to enforce the personal obligation of a purchase money note because a prior claim has absorbed the security places excessive weight on the form which the creditor has given the transaction. Such considerations strongly support California's refusal to

[8] Kerrigan v. Maloof, note 2 supra.
[9] 2A N.C. Gen. Stat. (Michie, 1950) §45-21.38.
[10] Brown v. Kirkpatrick, 217 N.C. 486, 8 S.E. (2d) 601 (1940).
[11] Ala. Gen. Stat. (1935) §184.
[12] Alabama Mortgage & Securities Corp. v. Chinery, 237 Ala. 198, 186 S. 136 (1939).
[13] 2 Ore. Comp. Laws Ann. (1940) §9-505.
[14] Stretch v. Murphy, 166 Ore. 439, 112 P. (2d) 1018 (1941).
[15] Federal Deposit Ins. Corp. v. Stensland, 70 S.D. 103, 15 N.W. (2d) 8 (1944).
[16] 3 S.D. Code (1939) §39.0308.
[17] N.D. Laws (1933) 223.
[18] Burrows v. Paulson, 64 N.D. 557, 254 N.W. 471 (1934).
[19] 3 N.D. Rev. Code (1943) §§32-1906, 32-1907. A recent amendment, N.D. Laws (1951) 300, allows a limited right of deficiency judgment, but no personal liability can be enforced except in connection with a foreclosure action. The antideficiency judgment statutes of New York and Nebraska have been held not to run against actions on the note, a result justified in both states by reliance upon a statutory pattern which deals separately with foreclosure and personal actions.

let the creditor look beyond the security for payment. However, it may be that even courts holding the contrary view would fully enforce the limitations on deficiency judgments where the device of multiple liens is utilized solely for the purpose of avoiding the statute.[20]

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[20] Generally, see OSBORNE, MORTGAGES §334 (1951). The problems raised under §580b by the introduction of third parties and outside security are discussed in 37 CALIF. L. REV. 690 (1949).