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CONFLICT OF LAWS-PROPERTY-LAW GOVERNING MORTGAGE DEFICIENCY JUDGMENTS

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CONFLICT OF LAWS—PROPERTY—LAW GOVERNING MORTGAGE DEFICIENCY JUDGMENTS—Defendant, a Michigan corporation, became a guarantor on a mortgage of land located in Alabama. Both the mortgage and underlying note were executed in Alabama and the note was payable there. Upon default, mortgagee, acting under a power of sale, foreclosed the mortgage and became the purchaser at the sale, which was duly conducted according to Alabama law. Mortgagee then brought this action in the federal district court for Michigan to recover the deficiency remaining due after foreclosure. Defendant claimed that the fair market value of the mortgaged property exceeded the balance due on the mortgage debt, and that under a Michigan statute¹ defendant should be allowed to use that value in computing the deficiency. No such statute was in force in Alabama. *Held*, the Michigan statute is inapplicable. The right to recover a deficiency judgment is a substantive right, and as such is governed by the law of Alabama. *Reconstruction Finance Corp. v. Mercury Realty Co.*, (D.C. Mich. 1951) 97 F. Supp. 491.

A basic proposition of American conflict of laws is that the validity and effect of transactions involving the incumbrance of land are governed by the law of the situs.² Thus the question of capacity of the parties to a mortgage,³ its validity,⁴ foreclosure⁵ and redemption⁶ are clearly questions to be determined by

¹The statute provides that where a mortgagee exercises a power of sale, becomes the purchaser at the sale and then brings a personal action for a deficiency judgment, "it shall be competent and lawful for the defendant against whom such deficiency judgment is sought to allege and show as matter of defense and set-off . . . that the property was fairly worth the amount of the debt secured by it at the time and place of sale." Comp. Laws (1948) §692.51, Mich. Stat. Ann. §27.1335.

²2 JONES, MORTGAGES, 8th ed., §§811, 812 (1928); GOODRICH, CONFLICT OF LAWS §152 (1949); CONFLICT OF LAWS RESTATEMENT §225 (1934).

³Proctor v. Frost, 89 N.H. 304, 197 A. 813 (1938); Swank v. Hufnagle, 111 Ind. 453, 12 N.E. 303 (1887); Thomson v. Kyle, 39 Fla. 582, 23 S. 12 (1897); Sell v. Miller, 11 Ohio St. 331 (1860).

⁴Sinclair v. Gunzenhauser, 179 Ind. 78, 98 N.E. 37 (1912); Goddard v. Sawyer, 9 Allen (91 Mass.) 78 (1864); CONFLICT OF LAWS RESTATEMENT §225, comment a.

⁵Elliott v. Wood, 45 N.Y. 71 (1871); CONFLICT OF LAWS RESTATEMENT §227.

⁶Smith v. Schlein, (D.C. Cir. 1944) 144 F. (2d) 257; Hughes v. Winkleman, 243 Mo. 81, 147 S.W. 994 (1912).

lex loci rei sitae. In the principal case the court was faced with the necessity of deciding whether that rule should be extended to include the method of calculating the deficiency remaining due on the personal obligation after foreclosure. Since the suit was brought in a Michigan court⁷ on the obligation of a Michigan corporation, defendant might urge the application of the Michigan deficiency statute on two grounds. First, it could be argued that the Michigan statute does not affect the validity or effect of the mortgage itself, but merely determines the nature of the remedy extended by the forum to the mortgagee, and that, therefore, the statute should be considered "procedural" rather than "substantive." This argument might be supported by the fact that the statute has been characterized as "procedural" or "remedial" in cases involving its constitutionality.⁸ However, the basic weakness of this argument is that while a statute may be considered "procedural" for constitutional purposes, it is not necessarily also "procedural" in the conflict of laws sense.⁹ Since a basic desideratum in the conflicts field is uniformity of result regardless of the forum chosen, it would seem that a law should be considered "procedural" only if the application of the corresponding rule of foreign law would be unduly burdensome or inconvenient to the forum.¹⁰ Clearly the Alabama law of deficiencies, being the common law, could be applied with no hindrance or inconvenience to the trial of the principal case; moreover, as the Alabama law is probably in accord with the normal expectations of the parties to an Alabama contract, it would seem that the court in the principal case was correct in characterizing the law as to computation of deficiency as "substantive" rather than as "procedural."¹¹

The second possible argument for defendant is that even though the right to a deficiency under Alabama law was a substantive right, the Michigan statute is evidence of a strong legislative policy against the use of Michigan courts to force Michigan citizens to pay more than their just mortgage debts, as measured

⁷ For the purposes of this note, a federal court sitting in Michigan is treated as a Michigan court, since the federal court is to follow the conflict of laws of the state in which it sits in all matters "which significantly affect the result of a litigation." *Guaranty Trust Co. v. York*, 326 U.S. 99, 65 S.Ct. 1464 (1945); *Klaxon Co. v. Stentor Electric Mfg. Co.*, 313 U.S. 487, 61 S.Ct. 1020 (1941); *Sampson v. Channell*, (1st Cir. 1940) 110 F. (2d) 754.

⁸ *Guardian Depositor's Corp. v. Powers*, 296 Mich. 553, 296 N.W. 675 (1941); *Guardian Depositor's Corp. v. Brown*, 290 Mich. 433, 287 N.W. 798 (1939). See also *Richmond Mortgage and Loan Corp. v. Wachovia Bank and Trust Co.*, 300 U.S. 124, 57 S.Ct. 338 (1937).

⁹ *Davis v. Mills*, 194 U.S. 451, 24 S.Ct. 692 (1904); Cook, "Substance' and 'Procedure' in the Conflict of Laws," 42 *YALE L.J.* 333 at 343 (1933). Cf. *Levy v. Steiger*, 233 Mass. 600, 124 N.E. 477 (1919).

¹⁰ Cook, "Substance' and 'Procedure' in the Conflict of Laws," 42 *YALE L.J.* 333 at 344 (1933); GOODRICH, *CONFLICT OF LAWS* §80 (1949); STUMBERG, *CONFLICT OF LAWS* 159 (1951). Cf. Ailes, "Substance and Procedure in the Conflict of Laws," 39 *MICH. L. REV.* 392 (1941).

¹¹ *Accord*: *McGill v. Brewer*, 132 Ore. 422, 280 P. 508, 285 P. 208 (1930); *Belmont v. Cornen*, 48 Conn. 338 (1880). *Contra*: *Fromm v. Glueck*, 161 Misc. 502, 293 N.Y.S. 530 (1937); *Bullington v. Angel*, 220 N.C. 18, 16 S.E. (2d) 411 (1941). But cf. *Angel v. Bullington*, 330 U.S. 183, 67 S.Ct. 657 (1947).

by the fair market value of the land at the time of foreclosure. It is a recognized rule that a contract which is contrary to the strong public policy of the forum need not be enforced there.¹² Thus courts of one state need not enforce a gambling contract made in and valid under the laws of another,¹³ or allow one spouse to sue another on a foreign based cause of action,¹⁴ or permit a feme covert to be sued as surety on her husband's obligations incurred in another state.¹⁵ However, the mere fact that the law of the forum differs from that of the situs cannot per se indicate that the public policy of the forum is strongly opposed to that of the situs.¹⁶ In the absence of a clear and unambiguous expression of legislative policy,¹⁷ it seems probable that today a court will not refuse to enforce substantive rights acquired under the laws of a sister state unless the forum has a special interest in protecting certain classes of its citizens,¹⁸ or unless the foreign law is of a character most obnoxious to the moral sense of the forum.¹⁹ In the principal case, it seems clear that the Michigan statute was not designed to protect Michigan corporations as a class in their out of state dealings; nor should the application of Alabama common law in a suit arising out of an Alabama note and mortgage involving Alabama land be so shocking to the Michigan conscience as to require the overriding of normal rules of conflict of laws.²⁰ It is submitted that the decision of the principal case is sound,

¹² *Reed v. Kelly*, (7th Cir. 1949) 177 F. (2d) 473; *Personal Finance Co. v. Gilinsky Fruit Co.*, 127 Neb. 450, 256 N.W. 511 (1934); *Young v. Nave*, 135 Kan. 23, 10 P. (2d) 23 (1932); CONFLICT OF LAWS RESTATEMENT §612. See generally Nussbaum, "Public Policy and the Political Crisis in the Conflict of Laws," 49 YALE L.J. 1027 (1940).

¹³ *Ciampittello v. Campitello*, 134 Conn. 51, 54 A. (2d) 669 (1947); *Gooch v. Faucett*, 122 N.C. 163, 29 S.E. 362 (1898). However, if the gambling contract had been reduced to judgment, enforcement would be mandatory under the full faith and credit clause. *Fauntleroy v. Lum*, 210 U.S. 230, 28 S.Ct. 641 (1908); CONFLICT OF LAWS RESTATEMENT §446. Any general discussion of the effect of the full faith and credit clause is beyond the scope of this note.

¹⁴ *Mertz v. Mertz*, 271 N.Y. 466, 3 N.E. (2d) 597 (1936); *Poling v. Poling*, 116 W.Va. 187, 179 S.E. 604 (1935).

¹⁵ *Union Trust Co. v. Grossman*, 245 U.S. 412, 38 S.Ct. 147 (1918); *Ullman, Magill & Jordan Woolen Co. v. Magill*, 155 Ga. 555, 117 S.E. 657 (1923).

¹⁶ *Veytia v. Alvarez*, 30 Ariz. 316, 247 P. 117 (1926); *Loucks v. Standard Oil Co. of New York*, 224 N.Y. 99, 120 N.E. 198 (1918); *Herrick v. Minneapolis & St. Louis Ry.*, 31 Minn. 11, 16 N.W. 413 (1883); CONFLICT OF LAWS RESTATEMENT §612, comment c. See also *Holman v. Johnson*, 1 Cowp. 341, 98 Eng. Rep. 1120 (1775).

¹⁷ As to the effect of such legislative declaration, and its treatment under the full faith and credit clause, see *Pacific Employers Ins. Co. v. Industrial Accident Comm.*, 306 U.S. 493, 59 S.Ct. 629 (1939); *Alaska Packers Assn. v. Industrial Accident Comm.*, 294 U.S. 532, 55 S.Ct. 518 (1935).

¹⁸ These seem to consist chiefly of *femes covert* and minors. See *Beauchamp v. Bertig*, 90 Ark. 351, 119 S.W. 75 (1909), and cases cited in notes 14 and 15 *supra*.

¹⁹ *Veytia v. Alvarez*, *supra* note 16; *Herrick v. Minneapolis & St. Louis Ry.*, *supra* note 16; CONFLICT OF LAWS RESTATEMENT §612, comment c.

²⁰ *Accord*: *Provident Savings Bank & Trust Co. v. Steinmetz*, 270 N.Y. 129, 200 N.E. 669 (1936); *Fidelity-Bankers' Trust Co. v. Little*, 178 S.C. 133, 181 S.E. 913 (1935); *Connecticut Mutual Life Ins. Co. v. Conley*, 194 Minn. 41, 259 N.W. 390 (1935); *STUMBERG*, CONFLICT OF LAWS 385 (1951). *Contra*: *Fromm v. Glueck*, *supra* note 11.

in view of the integral part which the deficiency judgment plays in the body of the mortgage law of the situs and the desirability of uniform enforcement of substantive rights among the several states.

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