Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

SPOUSES RODOLFO BEROT AND LILIA BEROT Petitioners,	**G. R. No. 188944**
	Present:
- versus -	SERENO, *CJ*, Chairperson, LEONARDO-DE CASTRO, BERSAMIN, VILLARAMA, JR., and REYES, *JJ.*
FELIPE C. SIAPNO, Respondent.	Promulgated: JUL 09 2014

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DECISION

SERENO, *CJ:*

Before us is a Petition for Review on Certiorari under Rule 45 of the 1997 Revised Rules on Civil Procedure assailing the Court of Appeals (CA) Decision dated 29 January 2009 in CA-G.R. CV No. 87995.[1] The assailed CA Decision affirmed with modification the Decision[2] in Civil Case No. 2004-0246-D issued by the Regional Trial Court (RTC), First Judicial Region of Dagupan City, Branch 42. The RTC Decision allowed the foreclosure of a mortgaged property despite the objections of petitioners claiming, among others, that its registered owner was impleaded in the suit despite being deceased.

THE FACTS

Considering that there are no factual issues in this case, we adopt the findings of fact of the CA, as follows:

> On May 23, 2002, Macaria Berot (or "Macaria") and spouses Rodolfo A. Berot (or "appellant") and Lilia P. Berot (or "Lilia") obtained

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[1] *Rollo*, pp. 21-28, CA Decision in CA-G.R. CV No. 87995 dated 29 January 2009, penned by Associate Justice Edgardo P. Cruz and concurred in by Associate Justices Magdangal M. de Leon and Ramon R. Garcia.

[2] Id. at 51-53, the RTC Decision dated 30 June 2006 in Civil Case No. 2004-0246-D was penned by Judge Rolando G. Mislang.

a loan from Felipe C. Siapno (or "appellee") in the sum of □250,000.00, payable within one year together with interest thereon at the rate of 2% per annum from that date until fully paid.

As security for the loan, Macaria, appellant and Lilia (or "mortgagors", when collectively) mortgaged to appellee a portion, consisting of 147 square meters (or "contested property"), of that parcel of land with an area of 718 square meters, situated in Banaoang, Calasiao, Pangasinan and covered by Tax Declaration No. 1123 in the names of Macaria and her husband Pedro Berot (or "Pedro"), deceased. On June 23, 2003, Macaria died.

Because of the mortgagors' default, appellee filed an action against them for foreclosure of mortgage and damages on July 15, 2004 in the Regional Trial Court of Dagupan City (Branch 42). The action was anchored on the averment that the mortgagors failed and refused to pay the abovementioned sum of □250,000.00 plus the stipulated interest of 2% per month despite lapse of one year from May 23, 2002.

In answer, appellant and Lilia (or "Berot spouses", when collectively [referred to]) alleged that the contested property was the inheritance of the former from his deceased father, Pedro; that on said property is their family home; that the mortgage is void as it was constituted over the family home without the consent of their children, who are the beneficiaries thereof; that their obligation is only joint; and that the lower court has no jurisdiction over Macaria for the reason that no summons was served on her as she was already dead.

With leave of court, the complaint was amended by substituting the estate of Macaria in her stead. Thus, the defendants named in the amended complaint are now the "ESTATE OF MACARIA BEROT, represented by Rodolfo A. Berot, RODOLFO A. BEROT and LILIA P. BEROT".

After trial, the lower court rendered a decision dated June 30, 2006, the decretal portion of which reads:

> WHEREFORE, the Court hereby renders judgment allowing the foreclosure of the subject mortgage. Accordingly, the defendants are hereby ordered to pay to the plaintiff within ninety (90) days from notice of this Decision the amount of □250,000.00 representing the principal loan, with interest at two (2%) percent monthly from February, 2004 the month when they stopped paying the agreed interest up to satisfaction of the claim and 30% of the amount to be collected as and for attorney's fees. Defendants are also assessed to pay the sum of □20,000.00 as litigation expenses and another sum of □10,000.00 as exemplary damages for their refusal to pay their aforestated loan obligation. If within the aforestated 90-day period the defendants fail to pay plaintiff the above-mentioned amounts, the sale of the property subject of the mortgage shall be made and the proceeds of the sale to be delivered to the plaintiff to cover the debt and charges mentioned above, and after such payments the excess, if any shall be delivered to the defendants.
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> SO ORDERED.

Appellant filed a motion for reconsideration of the decision but it was denied per order dated September 8, 2006. Hence, this appeal interposed by appellant imputing errors to the lower court in -

> 1. SUBSTITUTING AS DEFENDANT THE ESTATE OF MACARIA BEROT WHICH HAS NO PERSONALITY TO SUE AND TO BE SUED;
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> 2. APPOINTING RODOLFO BEROT AS A REPRESENTATIVE OF THE ESTATE OF THE DECEASED MACARIA BEROT TO THE PREJUDICE OF THE OTHER HEIRS, GRANTING FOR THE SAKE OF ARGUMENT THAT THE ESTATE OF MACARIA BEROT HAS A PERSONALITY TO SUE AND BE SUED;
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> 3. NOT FINDING THE MORTGAGE NULL AND VOID, WHICH WAS ENTERED INTO WITHOUT THE WRITTEN CONSENT OF THE BENEFICIARIES OF THE FAMILY HOME WHO WERE OF LEGAL AGE;
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> 4. MAKING DEFENDANTS LIABLE FOR THE ENTIRE OBLIGATION OF PH250,000.00, WHEN THE OBLIGATION IS ONLY JOINT;
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> 5. IMPOSING ATTORNEY'S FEE(S) IN THE DISPOSITIVE PORTION WITHOUT MAKING A FINDING OF THE BASIS THEREOF IN THE BODY; and
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> 6. IMPOSING EXEMPLARY DAMAGES AND LITIGATION EXPENSES.
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> Appellant contends that the substitution of the estate of Macaria for her is improper as the estate has no legal personality to be sued.[3]

On 29 January 2009, the CA, through its Seventh Division, promulgated a Decision that affirmed the RTC Decision but with modification where it deleted the award of exemplary damages, attorney's fees and expenses of litigation. The appellate court explained in its ruling that petitioners correctly argued that a decedent's estate is not a legal entity and thus, cannot sue or be sued. However, it noted that petitioners failed to object to the trial court's exercise of jurisdiction over the estate of Macaria when the latter was impleaded by respondents by amending the original complaint.[4] Adopting the rationale of the trial court on this matter, the CA held:

> As aptly observed by the trial court:
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> It may be recalled that when the plaintiff filed his Amended Complaint substituting the estate of Macaria Berot in place of Macaria Berot as party defendant, defendants made no objection thereto. Not even an amended answer was filed by the defendants questioning the substitution of the estate of Macaria Berot. For these reasons, the defendants are deemed to have waived any objection on the personality of the estate of Macaria Berot. Section 1, Rule 9 of the Rules of Court provides that, '<u>Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived</u>. (Order dated September 8, 2006) [5] [Underscoring supplied]

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[3] Id. at 21-24.

[4] Id. at 24.

[5] Id. at 25.

The CA also found the action of respondent to be procedurally correct under Section 7, Rule 86 of the Rules of Court, when it decided to foreclose on the mortgage of petitioner and prove his deficiency as an ordinary claim.[6] The CA did not make a categorical finding that the nature of the obligation was joint or solidary on the part of petitioners.[7] It neither sustained their argument that the mortgage was invalid for having been constituted over a family home without the written consent of the beneficiaries who were of legal age.[8] However, it upheld their argument that the award of exemplary damages and attorney's fees in favor of respondent was improper for lack of basis,[9] when it ruled thus:

> WHEREFORE, the appealed decision is AFFIRMED with MODIFICATION in that the award of exemplary damages, attorney's fees and expenses of litigation is DELETED.
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> SO ORDERED.[10]

Petitioners moved for the reconsideration of the CA Decision, but their motion was denied through a Resolution dated 9 July 2009.[11] Aggrieved by the denial of their Motion for Reconsideration, they now come to us through a Petition for Review on Certiorari under Rule 45, proffering purely questions of law.

THE ISSUES

The following are the issues presented by petitioners for resolution by this Court:

> The Court of Appeals erred in:
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> 1. Holding that the intestate estate of Macaria Berot could be a proper party by waiver expressly or impliedly by voluntary appearance;
>
> 2. In not holding that the obligation is joint[12]

THE COURT'S RULING

We **DENY** the Petition for lack of merit.

Petitioners were correct when they argued that upon Macaria Berot's death on 23 June 2003, her legal personality ceased, and she could no longer be impleaded as respondent in the foreclosure suit. It is also true that her death opened to her heirs the succession of her estate, which in this case was

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[6] Id.
[7] Id. at 26.
[8] Id. at 26-27.
[9] Id. at 27.
[10] Id.
[11] Id. at 31-32, CA Resolution in CA-G.R. CV No. 87995 dated 09 July 2009, penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Magdangal M. de Leon and Arturo G. Tayag.
[12] Id. at 14.

an intestate succession. The CA, in fact, sustained petitioners' position that a deceased person's estate has no legal personality to be sued. Citing the Court's ruling in *Ventura v. Militante*,[13] it correctly ruled that a decedent does not have the capacity to be sued and may not be made a defendant in a case:

> A deceased person does not have such legal entity as is necessary to bring action so much so that a motion to substitute cannot lie and should be denied by the court. An action begun by a decedent's estate cannot be said to have been begun by a legal person, since an estate is not a legal entity; such an action is a nullity and a motion to amend the party plaintiff will not, likewise, lie, there being nothing before the court to amend. Considering that capacity to be sued is a correlative of the capacity to sue, to the same extent, a decedent does not have the capacity to be sued and may not be named a party defendant in a court action.

When respondent filed the foreclosure case on 15 June 2004 and impleaded Macaria Berot as respondent, the latter had already passed away the previous year, on 23 June 2003. In their Answer[14] to the Complaint, petitioners countered among others, that the trial court did not have jurisdiction over Macaria, because no summons was served on her, precisely for the reason that she had already died. Respondent then amended his Complaint with leave of court and substituted the deceased Macaria by impleading her intestate estate and identified Rodolfo Berot as the estate's representative. Thereafter, the case proceeded on the merits at the trial, where this case originated and where the Decision was promulgated.

It can be gleaned from the records of the case that petitioners did not object when the estate of Macaria was impleaded as respondent in the foreclosure case. Petitioner Rodolfo Berot did not object either when the original Complaint was amended and respondent impleaded him as the administrator of Macaria's estate, in addition to his being impleaded as an individual respondent in the case. Thus, the trial and appellate courts were correct in ruling that, indeed, petitioners impliedly waived any objection to the trial court's exercise of jurisdiction over their persons at the inception of the case. In resolving the Motion for Reconsideration of petitioners as defendants in Civil Case No. 2004-0246-D, the RTC was in point when it ruled:

> It may be recalled that when the plaintiff filed his Amended Complaint substituting the estate of Macaria Berot in place of Macaria Berot as party defendant, defendants made no objections thereto. Not even an amended answer was filed by the defendants questioning the substitution of the estate of Macaria Berot. For these reasons, the defendants are deemed to have waived any objection on the personality of the estate of Macaria Berot. Section 1, Rule 9 of the Rules of Court provides that, "Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. x x x. (Underscoring ours)[15]

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[13] G.R. No. 63145, 374 Phil. 562 (1999).
[14] RTC records, pp. 27-29.
[15] *Rollo*, p. 57.

Indeed, the defense of lack of jurisdiction over the person of the defendant is one that may be waived by a party to a case. In order to avail of that defense, one must timely raise an objection before the court.[16]

The records of the case show that on 9 November 2004, a hearing was held on the Motion for Leave to File filed by respondent to have her amended Complaint admitted. During the said hearing, the counsel for petitioners did not interpose an objection to the said Motion for Leave.[17] On 18 March 2005, a hearing was held on respondent's Motion to Admit Amended Complaint, wherein counsel for petitioners again failed to interpose any objection.[18] Thus, the trial court admitted respondent's Amended Complaint and ordered that a copy and a summons be served anew on petitioners.[19]

In an Order[20] dated 14 April 2005, the RTC noted that petitioners received the summons and the copy of the amended Complaint on 3 February 2005 and yet they did not file an Answer. During the trial on the merits that followed, petitioners failed to interpose any objection to the trial court's exercise of jurisdiction over the estate of Macaria Berot. Clearly, their full participation in the proceedings of the case can only be construed as a waiver of any objection to or defense of the trial court's supposed lack of jurisdiction over the estate.

In *Gonzales v. Balikatan Kilusang Bayan sa Panlalapi, Inc.,*[21] we held that a party's appearance in a case is equivalent to a service of summons and that objections must be timely raised:

> In this regard, petitioners should be reminded of the provision in the Rules of Court that a defendant's voluntary appearance in an action shall be equivalent to service of summons. Further, the lack of jurisdiction over the person of the defendant may be waived either expressly or impliedly. When a defendant voluntarily appears, he is deemed to have submitted himself to the jurisdiction of the court. If he does not wish to waive this defense, he must do so seasonably by motion, and object thereto.

It should be noted that Rodolfo Berot is the son of the deceased Macaria[22] and as such, he is a compulsory heir of his mother. His substitution is mandated by Section 16, Rule 3 of the Revised Rules of Court. Notably, there is no indication in the records of the case that he had other siblings who would have been his co-heirs. The lower and appellate courts veered from the real issue whether the proper parties have been

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[16] *Villareal v. Court of Appeals*, 356 Phil. 825 (1998), citing *Flores v. Zurbito,* 37 Phil. 746, *La Naval Drug Corp. v. Court of Appeals,* G.R. No. 103200, August 31, 1994, 236 SCRA 78, and *Boticano v. Chu, Jr.*, G.R. No. L-58036, 16 March 1987, 148 SCRA 541.
[17] RTC records, p. 65.
[18] Id. at 91.
[19] Id.
[20] Id. at 93.
[21] G.R. No. 150859, 494 Phil.105 (2005).
[22] *Rollo*, p. 53.

impleaded. They instead focused on the issue whether there was need for a formal substitution when the deceased Macaria, and later its estate, was impleaded. As the compulsory heir of the estate of Macaria, Rodolfo is the real party in interest in accordance with Section 2, Rule 3 of the Revised Rules of Court. At the time of the filing of the complaint for foreclosure, as well as the time it was amended to implead the estate of Macaria, it is Rodolfo – as heir – who is the real party in interest. He stands to be benefitted or injured by the judgment in the suit.

Rodolfo is also Macaria's co-defendant in the foreclosure proceedings in his own capacity as co-borrower of the loan. He participated in the proceedings of the case, from the initial hearing of the case, and most particularly when respondent filed his amended complaint impleading the estate of Macaria. When respondent amended his complaint, Rodolfo did not file an amended Answer nor raise any objection, even if he was also identified therein as the representative of the estate of the deceased Macaria. The lower court noted this omission by Rodolfo in its Order dated 8 September 2006 ruling on his Motion for Reconsideration to the said court's Decision dated 30 June 2006. Thus, his continued participation in the proceedings clearly shows that the lower court acquired jurisdiction over the heir of Macaria.

In *Regional Agrarian Reform Adjudication Board v. Court of Appeals*,[23] we ruled that:

> [W]e have to point out that the confusion in this case was brought about by respondents themselves when they included in their complaint two defendants who were already dead. Instead of impleading the decedent's heirs and current occupants of the landholding, respondents filed their complaint against the decedents, contrary to the following provision of the 1994 DARAB Rules of Procedure:
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> RULE V
> PARTIES, CAPTION AND SERVICE OF PLEADINGS
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> SECTION 1. Parties in Interest. Every agrarian case must be initiated and defended in the name of the real party in interest. x x x.
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> A real party in interest is defined as "the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of a suit." The real parties in interest, at the time the complaint was filed, were no longer the decedents Avelino and Pedro, but rather their respective heirs who are entitled to succeed to their rights (whether as agricultural lessees or as farmers-beneficiaries) under our agrarian laws. They are the ones who, as heirs of the decedents and actual tillers, stand to be removed from the landholding and made to pay back rentals to respondents if the complaint is sustained.

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[23] *Regional Agrarian Reform Adjudication Board v. Court of Appeals*, G.R. No. 165155, 13 April 2010, 618 SCRA 181.

> Since respondents failed to correct their error (they did not amend the erroneous caption of their complaint to include the real parties-in-interest), they cannot be insulated from the confusion which it engendered in the proceedings below. But at any rate, notwithstanding the erroneous caption and the absence of a formal substitution of parties, jurisdiction was acquired over the heirs of Avelino and Pedro who voluntarily participated in the proceedings below. This Court has ruled that formal substitution of parties is not necessary when the heirs themselves voluntarily appeared, participated, and presented evidence during the proceedings.

As such, formal substitution of the parties in this case is not necessary.

In *Vda. De Salazar v. Court of Appeals*[24] we ruled that a formal substitution of the heirs in place of the deceased is no longer necessary if the heirs continued to appear and participated in the proceedings of the case. In the cited case, we explained the rationale of our ruling and related it to the due process issue, to wit:

> We are not unaware of several cases where we have ruled that a party having died in an action that survives, the trial held by the court without appearance of the deceased's legal representative or substitution of heirs and the judgment rendered after such trial, are null and void because the court acquired no jurisdiction over the persons of the legal representatives or of the heirs upon whom the trial and the judgment would be binding. This general rule notwithstanding, in denying petitioner's motion for reconsideration, the Court of Appeals correctly ruled that formal substitution of heirs is not necessary when the heirs themselves voluntarily appeared, participated in the case and presented evidence in defense of deceased defendant. Attending the case at bench, after all, are these particular circumstances which negate petitioner's belated and seemingly ostensible claim of violation of her rights to due process. We should not lose sight of the principle underlying the general rule that formal substitution of heirs must be effectuated for them to be bound by a subsequent judgment. Such had been the general rule established not because the rule on substitution of heirs and that on appointment of a legal representative are jurisdictional requirements per se but because non-compliance therewith results in the undeniable violation of the right to due process of those who, though not duly notified of the proceedings, are substantially affected by the decision rendered therein. Viewing the rule on substitution of heirs in this light, the Court of Appeals, in the resolution denying petitioner's motion for reconsideration, thus expounded:
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> > *Although the jurisprudential rule is that failure to make the substitution is a jurisdictional defect, it should be noted that the purpose of this procedural rule is to comply with due process requirements. The original party having died, he could not continue, to defend himself in court despite the fact that the action survived him. For the case to continue, the real party in interest must be substituted for the deceased. The real party in interest is the one who would be affected by the judgment. It could be the administrator or executor or the heirs. In the instant case, the heirs are the proper substitutes. Substitution gives them*

[24] 332 Phil. 373, 377-380 (1995).

the opportunity to continue the defense for the deceased. Substitution is important because such opportunity to defend is a requirement to comply with due process. Such substitution consists of making the proper changes in the caption of the case which may be called the formal aspect of it. Such substitution also includes the process of letting the substitutes know that they shall be bound by any judgment in the case and that they should therefore actively participate in the defense of the deceased. This part may be called the substantive aspect. This is the heart of the procedural rule because this substantive aspect is the one that truly embodies and gives effect to the purpose of the rule. It is this court's view that compliance with the substantive aspect of the rule despite failure to comply with the formal aspect may he considered substantial compliance. Such is the situation in the case at bench because the only inference that could be deduced from the following facts was that there was active participation of the heirs in the defense of the deceased after his death:

1. The original lawyer did not stop representing the deceased. It would be absurd to think that the lawyer would continue to represent somebody if nobody is paying him his fees. The lawyer continued to represent him in the litigation before the trial court which lasted for about two more years. A dead party cannot pay him any fee. With or without payment of fees, the fact remains that the said counsel was allowed by the petitioner who was well aware of the instant litigation to continue appearing as counsel until August 23, 1993 when the challenged decision was rendered;

2. After the death of the defendant, his wife, who is the petitioner in the instant case, even testified in the court and declared that her husband is already deceased. She knew therefore that there was a litigation against her husband and that somehow her interest and those of her children were involved;

3. This petition for annulment of judgment was filed only after the appeal was decided against the defendant on April 3, 1995, more than one and a half year (sic) after the decision was rendered (even if we were to give credence to petitioner's manifestation that she was not aware that an appeal had been made);

4. The Supreme Court has already established that there is such a thing as jurisdiction by estoppel. This principle was established even in cases where jurisdiction over the subject matter was being questioned. In the instant case, only jurisdiction over the person of the heirs is in issue. Jurisdiction over the person may be acquired by the court more easily than jurisdiction over the subject matter. Jurisdiction over the person may be acquired by the simple appearance of the person in court as did herein petitioner appear;

5. The case cited by the herein petitioner (Ferreria et al. vs. Manuela Ibarra vda. de Gonzales, et al.) cannot be availed of to support the said petitioner's contention relative to non-acquisition of jurisdiction by the court. In that case, Manolita Gonzales was not served notice and, more importantly, she never

> *appeared in court, unlike herein petitioner who appeared and even testified regarding the death of her husband.*

In this case, Rodolfo's continued appearance and participation in the proceedings of the case dispensed with the formal substitution of the heirs in place of the deceased Macaria. The failure of petitioners to timely object to the trial court's exercise of jurisdiction over the estate of Macaria Berot amounted to a waiver on their part. Consequently, it would be too late for them at this point to raise that defense to merit the reversal of the assailed decision of the trial court. We are left with no option other than to sustain the CA's affirmation of the trial court's Decision on this matter.

On the second issue of whether the nature of the loan obligation contracted by petitioners is joint or solidary, we rule that it is joint.

Under Article 1207 of the Civil Code of the Philippines, the general rule is that when there is a concurrence of two or more debtors under a single obligation, the obligation is presumed to be joint:

> Art. 1207. The concurrence of two or more creditors or of two or more debtors in one and the same obligation does not imply that each one of the former has a right to demand, or that each one of the latter is bound to render, entire compliance with the prestations. There is a solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity.

The law further provides that to consider the obligation as solidary in nature, it must expressly be stated as such, or the law or the nature of the obligation itself must require solidarity. In *PH Credit Corporation v. Court of Appeals*,[25] we held that:

> A *solidary* obligation is one in which each of the debtors is liable for the entire obligation, and each of the creditors is entitled to demand the satisfaction of the whole obligation from any or all of the debtors. On the other hand, a *joint* obligation is one in which each debtors is liable only for a proportionate part of the debt, and the creditor is entitled to demand only a proportionate part of the credit from each debtor. The well-entrenched rule is that solidary obligations cannot be inferred lightly. They must be positively and clearly expressed. A liability is solidary "only when the obligation expressly so states, when the law so provides or when the nature of the obligation so requires."

In the instant case, the trial court expressly ruled that the nature of petitioners' obligation to respondent was solidary.[26] It scrutinized the real estate mortgage and arrived at the conclusion that petitioners had bound themselves to secure their loan obligation by way of a real estate mortgage in the event that they failed to settle it.[27] But such pronouncement was not

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[25] G.R. No. 109648, 421 Phil. 821 (2001).
[26] *Rollo*, pp. 57-58.
[27] RTC records, p. 110.

expressly stated in its 30 June 2006 Decision. This was probably the reason why, when the trial court Decision was appealed to it, the CA did not squarely address the issue when the latter ruled that:

> It is noteworthy that the appealed decision makes no pronouncement that the obligation of the mortgagors is solidary; and that said decision has not been modified by the trial court. Hence, it is unnecessary for US to make a declaration on the nature of the obligation of the mortgagors.[28]

However, a closer scrutiny of the records would reveal that the RTC expressly pronounced that the obligation of petitioners to the respondent was solidary. In resolving petitioners' Motion for Reconsideration to its 30 June 2006 Decision, the trial court categorically ruled that:

> Defendants [sic] obligation with plaintiff is solidary. A careful scrutiny of the Real Estate Mortgage (Exh. "A") will show that all the defendants, for a single loan, bind themselves to cede, transfer, and convey by way of real estate mortgage all their rights, interest and participation in the subject parcel of land including the improvements thereon in favor of the plaintiff, and warrant the same to be free from liens and encumbrances, and that should they fail to perform their obligation the mortgage will be foreclosed. From this it can be gleaned that each of the defendants obligated himself/herself to perform the said solidary obligation with the plaintiff.[29]

We do not agree with this finding by the trial court.

We have scoured the records of the case, but found no record of the principal loan instrument, except an evidence that the real estate mortgage was executed by Macaria and petitioners. When petitioner Rodolfo Berot testified in court, he admitted that he and his mother, Macaria had contracted the loan for their benefit:

> Q: On the Real Estate Mortgage, you and your mother obtained a loan from Mr. Siapno in the amount of □250,000.00, now as between you and your mother whose loan is that?
> A: It is the loan of my mother and myself, sir.[30]

The testimony of petitioner Rodolfo only established that there was that existing loan to respondent, and that the subject property was mortgaged as security for the said obligation. His admission of the existence of the loan made him and his late mother liable to respondent. We have examined the contents of the real estate mortgage but found no indication in the plain wordings of the instrument that the debtors – the late Macaria and herein petitioners – had expressly intended to make their obligation to respondent solidary in nature. Absent from the mortgage are the express and indubitable

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[28] *Rollo*, p. 26.
[29] RTC records, pp. 130-131.
[30] TSN dated 09 March 2006, p. 3.

terms characterizing the obligation as solidary. Respondent was not able to prove by a preponderance of evidence that petitioners' obligation to him was solidary. Hence, applicable to this case is the presumption under the law that the nature of the obligation herein can only be considered as joint. It is incumbent upon the party alleging otherwise to prove with a preponderance of evidence that petitioners' obligation under the loan contract is indeed solidary in character.[31]

The CA properly upheld respondent's course of action as an availment of the second remedy provided under Section 7, Rule 86 of the 1997 Revised Rules of Court.[32] Under the said provision for claims against an estate, a mortgagee has the legal option to institute a foreclosure suit and to recover upon the security, which is the mortgaged property.

During her lifetime, Macaria was the registered owner of the mortgaged property, subject of the assailed foreclosure. Considering that she had validly mortgaged the property to secure a loan obligation, and given our ruling in this case that the obligation is joint, her intestate estate is liable to a third of the loan contracted during her lifetime. Thus, the foreclosure of the property may proceed, but would be answerable only to the extent of the liability of Macaria to respondent.

WHEREFORE, the CA Decision in CA-G.R. CV No. 87995 sustaining the RTC Decision in Civil Case No. 2004-0246-D is hereby **AFFIRMED** with the **MODIFICATION** that the obligation of petitioners and the estate of Macaria Berot is declared as joint in nature.

SO ORDERED.

MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

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[31] *Escaño v. Ortigas, Jr.*, G. R. No. 151953, 29 June 2007, 526 SCRA 26.

[32] RULE 86, SEC. 7. *Mortgage debt due from estate.* — A creditor holding a claim against the deceased secured by 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 proceedings 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 adjudge it to be for the best interest of the estate that such redemption shall be made.

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice