

**ECONOMIC DEVELOPMENT  
LOAN FUND**

**vs.**

**Pedro S. ARRIOLA**

**DCA No. 84-9008  
CTC No. 83-282  
District Court NMI  
Appellate Division**

**Decided June 27, 1985**

**1. Appeal and Error - Standard of  
Review - Involuntary Dismissal**

Findings made by the trial court when granting an involuntary dismissal at the close of plaintiff's case, which is an adjudication on the merits, should not be overturned unless they are clearly erroneous. Com. Tr. C. R.Civ.Pro. 41 (b).

**2. Appeal and Error - Standard of  
Review - Factual Findings**

Findings are clearly erroneous only if the appellate court is definitely and firmly convinced that a mistake has been committed.

**3. Secured Transactions - Default  
- Notice**

In the Commonwealth, there is a statutory requirement of notice before foreclosure of a secured interest. 57 T.T.C. §51.

**4. Secured Transactions - Default  
- Disposition of Collateral**

Trial court's decision to adopt the majority rule - which absolutely bars a deficiency judgment where the creditor fails to comply with the notice provisions of a repossession and resale statute - is not clearly erroneous. 57 T.T.C. §51.

FILED  
Clerk  
District Court

JUN 27 1995

For The Northern Mariana Islands  
B. [Signature]  
(Resubmit [Signature])

1 IN THE DISTRICT COURT  
2 FOR THE  
3 NORTHERN MARIANA ISLANDS

4 APPELLATE DIVISION

5 ECONOMIC DEVELOPMENT LOAN FUND, ) DCA NO. 84-9008  
6 Plaintiff/Appellant, ) CTC NO. 83-282  
7 vs. ) OPINION  
8 PEDRO S. ARRIOLA, )  
9 Defendant/Appellee. )

10  
11 BEFORE: LAURETA, WEIGEL and DUENAS, District Judges

12 LAURETA, District Judge:

13 This is an appeal of the Commonwealth Trial Court's  
14 decision barring a deficiency judgment against debtor because the  
15 creditor failed to comply with the provisions of 57 Trust  
16 Territory Code (TTC).

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18 FACTS

19 Creditor, EDLF, brought this action against defendant,  
20 Pedro S. Arriola, to collect on a promissory note.

21 On July 19, 1975 Arriola executed and delivered to EDLF  
22 his promissory note for nine thousand dollars (\$9,000.00), with  
23 interest thereon at five per cent per annum. On the same day,  
24 Arriola executed and delivered a chattel mortgage to EDLF, as  
25 security for payment of the note, which mortgage covered a 40 ft.  
26 Japanese diesel sampan with accompanying fishing gears, two

1 outboard engines, and other properties. The total value listed  
2 in the chattel mortgage was \$15,000.

3 Out of the \$9,000 that Arriola was granted, he received  
4 and used the sum of \$7,500. He never made any payments to EDLF,  
5 though there was evidence that he made attempts to have EDLF  
6 repossess the boat in satisfaction of the debt as early as 1976.

7 From the end of 1976 until the fall of 1982, Arriola  
8 was off-island except for short return visits to Saipan.

9 EDLF took no action on this loan until June of 1979  
10 when it wrote to Arriola telling him to make arrangements to  
11 make his loan payments. Receiving no reply, EDLF sent a second  
12 letter, dated August 29, 1979, stating that it had taken pos-  
13 session of the boat and it would be sold, auctioned or leased if  
14 the loan payments were not brought up to date within ten days of  
15 the date of the letter.

16 Finally, EDLF mailed a third letter, dated September  
17 29, 1979, which inter alia, gave notice that the boat would be  
18 sold at auction on October 1, 1979. On this date no one appeared  
19 at the sale and no bids were received.

20 In March of 1980, EDLF finally sold the boat, which was  
21 by then partially submerged under water, for \$500. There was no  
22 evidence that Arriola was informed of this sale, or any such  
23 impending sale, subsequent to September 25, 1979.

24 EDLF subsequently brought this action to recover the  
25 deficiency due on the note.

26 At the close of EDLF's case, Arriola moved for an

1 involuntary dismissal, pursuant to Commonwealth Trial Court Rule  
2 of Civil Procedure 41(b), on the ground that upon the facts and  
3 the law the plaintiff had shown no right to relief. The trial  
4 court granted defendant's motion, and EDLF appealed. The debtor  
5 has requested costs and attorney's fees on this appeal, pursuant  
6 to District Court Rule of Appellate Procedure 18.

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DISCUSSION

9 [1,2] Findings made by the trial court when granting a  
10 dismissal pursuant to Commonwealth Trial Court R.Civ.P. 41(b),  
11 which is an adjudication on the merits, should not be overturned  
12 unless they are clearly erroneous. Commonwealth Trial Court  
13 R.Civ.P. 52(a); Maykuth v. Adolph Coors Co., 690 F.2d 689, 695  
14 (9th Cir.). Findings are "clearly erroneous" only if the appel-  
15 late court is definitely and firmly convinced that a mistake has  
16 been committed. United States v. United States Gypsum Co., 333  
17 U.S. 364, 395 (1948); Agarwal v. Arthur C. McKee & Co., 644 F.2d  
18 803, 806 (9th Cir. 1981).

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Here, the Trial Court found that

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... under the facts presented in plaintiff's case... the plaintiff failed to comply with the procedures of [57 TTC §§ 51-53] in that: (1) plaintiff failed to give 10 days notice to defendant of the public auction; (2) service of any notice of sale/auction did not comply with § 51(2) in that there was no personal service or delivery at his residence or place of business; (3) there was no posting of the notice at three conspicuous

1 places; and (4) no sale was con-  
2 ducted within 90 days. Memorandum  
3 Opinion, dated April 11, 1984.

4 Pursuant to these findings the court adopted the  
5 majority rule, which holds that if a creditor fails to give the  
6 statutory notice in a foreclosure of a personal property secured  
7 interest, he is absolutely barred from a deficiency judgment.  
8 Nixdorf Computer, Inc. v. Jet Forwarding, Inc., 579 F.2d 1175  
9 (9th Cir. 1978).

10 [3] 57 TTC § 51(2) is very specific regarding the manner in  
11 which notice is to be given:

12 This notice may be given personally  
13 to the debtor or by leaving it at  
14 his usual place of abode or of  
15 business with some person not less  
16 than eighteen years of age and of  
17 sound mind then residing or  
18 employed there, and, if the person  
19 with whom the notice is left states  
20 he is unable to read it, by also  
21 orally explaining the substance of  
22 it to him, if practical, in a lan-  
23 guage generally understood in the  
24 locality.

25 The trial court recognized, in its oral decision, that  
26 while the notice requirements did place a heavier burden on  
creditors, nonetheless, the court "perceive[d] the reason for  
that is that the drafters of Title 57, Section 51 realized that  
they were probably dealing with, first, unsophisticated people as  
far as their loans are concerned and they wanted to make sure  
that that person, the debtor, received adequate notice."

27 [4] This statement adequately reflects the majority posi-  
28 tion in the United States. Certainly, it applies here, where

1 most consumers are economically unsophisticated, English is  
2 generally not their first language, and the education level is  
3 relatively low.

4. Moreover, as more than one court has noted, the re-  
5 quirement to give notice to the debtor is not difficult to comply  
6 with and the burden thereby placed on the creditor is minimal,  
7 especially in light of the potentially onerous results to the  
8 debtor. See, Staley Employee Credit Union v. Christie, 111.App.  
9 3d 165, 443 N.E.2d 731 (1982); Wilmington Trust Co. v. Connor,  
10 415 A.2d 773 (Del. 1980). A creditor can comply with the simple  
11 statutory requirements with ease. But, absent clear notice of  
12 the precise time and place of sale, the debtor may be severely  
13 hampered in defending against any subsequent deficiency action.  
14 Moreover, it will be difficult for the debtor to later find  
15 evidence to rebut the contention of the creditor that it disposed  
16 of the property at a reasonable price. For these reasons courts  
17 generally favor placing the heavier burden upon the creditor/  
18 seller.

19 Further, notice of the disposition of collateral has  
20 been recognized as a fundamental right of the debtor. See  
21 Randolph v. Franklin Investment Co., Inc., 398 A.2d 340 (D.C.App.  
22 1979). It protects the debtor's interest in the collateral by  
23 giving him the opportunity, often his only real opportunity, to  
24 pay the debt, or find buyers willing to pay a price sufficient to  
25 significantly reduce the deficiency, or to himself be present at  
26 the sale to bid on the property or to observe the conduct of the

1 sale. Maryland National Bank v. Wathen, 414 A.2d 1261 (Md.App.  
2 1980).

3 Finally, given the continued availability of a  
4 deficiency judgment, a secured creditor does not necessarily have  
5 the incentive to strictly comply with the statute provisions nor  
6 to obtain the highest possible resale price. A debtor would  
7 obviously be severely prejudiced by such a lack of incentive.

8 However, despite these clear reasons favoring strict  
9 enforcement of statutory notice provisions, a minority of juris-  
10 dictions hold that once improper notice has been established the  
11 question simply becomes one of commercial reasonableness. In  
12 relation thereto, if the seller produces no evidence concerning  
13 the sale itself the commercial reasonableness of the sale will  
14 generally not be found because, as between the parties, such  
15 evidence is usually available only to the seller. Tauber v.  
16 Johnson, 8 Ill.App.3d 789, 291 N.E.2d 180 (1972).

17 Even if the Commonwealth Trial Court had adopted such a  
18 position, no evidence of commercial reasonableness was offered by  
19 EDLF. The sole evidence as to value of the collateral was a  
20 statement by an employee of EDLF to the effect that the best  
21 price that could be obtained at the time of sale was \$500.  
22 Moreover, EDLF produced no evidence that the boat did not sink  
23 while in its custody after repossession, nor that the collateral  
24 was repaired or reconditioned before the sale, nor that EDLF  
25 had an appraisal report prepared prior to the time of sale.  
26 (See, In Re Bishop, 482 F.2d 381 (4th Cir. 1973). In fact, EDLF

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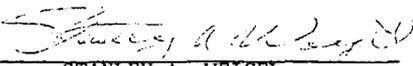
produced no evidence, aside from the fact that the boat was partially submerged at the time of sale, to explain the discrepancy in value from at least \$15,000 at the time of purchase to only \$500 a mere three years later.

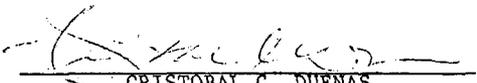
For the above reasons, the trial court's decision to adopt the majority rule, absolutely barring a deficiency judgment where the creditor fails to strictly comply with the notice provisions of a repossession and resale statute, is not clearly erroneous. It is, in fact, the better rule for this jurisdiction.

The decision of the trial court is AFFIRMED.  
No costs will be awarded on this appeal.

DATED: June 27, 1985

  
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ALFRED LAURETA  
District Judge

  
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STANLEY A. WEIGEL  
District Judge

  
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CRISTOBAL C. DUENAS  
District Judge