

**SPOUSES TONY L. MACAYAN & MARIA ROSARIO MACAYAN,
REPRESENTED BY RODERICK E. LORENZO, PETITIONERS, V. HON.
NANCY RIVAS-PALMONES, REGIONAL TRIAL COURT (RTC) BRANCH
172, VALENZUELA...**

Ponente: ELBINIAS, J.

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ELBINIAS, J.:

For disposition is a Petition for Certiorari[1] filed under Rule 65 of the Rules of Court. The Petition assails the Order[2] dated March 22, 2010 issued by public respondent Hon. Nancy Rivas-Palmones of the Regional Trial Court (“respondent court” for brevity) of Valenzuela City, Branch 172 in Civil Case No. 86-v-09 for “Cancellation/Annulment of Extra Judicial Foreclosure Sale dated February 18, 2009, Certificate of Sale dated February 23, 2009 and All [P]roceedings/[D]ocuments related thereto with Damages”[3]. The Petition also questions respondent court's Orders dated May 24, 2010[4] and October 18, 2010[5], which denied petitioners' eventual Motions for Reconsideration[6].

The antecedent facts are:

On June 21, 2006[7], petitioners Spouses Tony L. Macayan and Maria Rosario L. Macayan (“petitioners” for brevity), through their Attorney-in-Fact Roderick E. Lorenzo[8] (“Lorenzo” for brevity), executed a “REAL ESTATE MORTGAGE”[9] (“REM” for brevity) in favor of private respondent Philippine Savings Bank (“private respondent bank” for brevity) over a parcel of land (“subject property” for brevity) situated in Brgy. Malanday, Valenzuela City and covered by Transfer Certificate of Title (TCT) No. V-79870[10] registered under the names of petitioners. The REM was executed by petitioners to secure their loan from respondent bank in the amount of Two Million Pesos (Php 2,000,000.00).[11]

The rest of the facts are those as found by respondent court's Order[12] dated March 22, 2010, as follows:

“Record shows that on February 18, 2009, a public auction involving TCT No. V-79870 consisting of P500 (sic) square meters (subject property here) registered in the name of plaintiffs (petitioners here) was sold for P1,786,185.67 in favor of defendant bank (respondent bank here) for which a certificate of sale was issued and registered with the Registry of Deeds, Valenzuela City on March 2, 2009.”[13] (Emphasis Supplied)

On July 24, 2009, petitioners filed before respondent court, a Complaint[14] for “Cancellation/Annulment of Extra Judicial Foreclosure Sale dated February 18, 2009, Certificate of Sale dated February 23, 2009 and All [P]roceedings/[D]ocuments related thereto with Damages” against private respondent bank, public respondents Ex-Officio Sheriff Atty. Gemma Lucero-Peliño and Sheriff Louie C. Dela Cruz (“respondent Sheriffs” for brevity) of the Regional Trial Court of Valenzuela City, and the Register of Deeds of Valenzuela City.[15]

On March 1, 2010, petitioners filed before respondent court, an “URGENT MOTION FOR ISSUANCE OF TEMPORARY RESTRAINING ORDER AND/OR WRIT OF INJUNCTION”[16] (“Motion for Issuance of TRO and Writ of Injunction” for brevity) in order to prevent private respondent bank from consolidating its

ownership over the subject property.

The rest of the facts are continued in respondent court's Order[17] dated March 22, 2010, to wit:

“xxx On February 2, 2010, or within the redemption period, the plaintiff[s] (petitioners) manifested its willingness to redeem the property on installment basis, however, defendant bank (respondent bank) insisted that redemption will be effected only by paying in full [the] amount of P2,420,578.42.

Plaintiffs (petitioners) argued that the amount of P2,420,578.42 which is being demanded by the defendant bank (respondent bank) is unjust and without basis in law and in fact. The amount as stated in the Certificate of Sale as the highest bid price is limited only to P1,786,185.67. However, when plaintiff[s] (petitioners) manifested its (sic) willingness to redeem the property on installment basis, the defendant bank (respondent bank) demanded from the plaintiff[s] (petitioners) the amount of P2,420,578.42 as redemption price which is different from the bid price and definitely excessive, contrary to law, morals, good custom[s] and public policy. Furthermore, there is an obvious scheme to unduly deny the plaintiffs (petitioners) the opportunity to exercise their right of redemption and thereby unduly deprive them of their property rights. There is an urgent need for the issuance of a temporary restraining order to enjoin the defendant bank (respondent bank) and the Registry of Deeds of Valenzuela City from consolidation of its ownership or transferring ownership from that of plaintiff's (sic) title particular TCT No. V-79870 in the name of the defendant bank. Unless restrained, the defendant bank (respondent bank) will proceed to annotate and/or consolidated its title covered by TCT No. V-79870 and the Register of Deeds of Valenzuela City will cancel said title and issue new one in the name of defendant bank (respondent bank) which will certainly cause injustice and irreparable damage and injury to plaintiff[s] (petitioners) and illegal deprivation of property rights and would render this case moot and any judgment that may be rendered herein ineffectual.

On the other hand, defendant bank (respondent bank) contends that there is no clear showing that defendant bank (respondent bank) violated the right of plaintiffs (petitioners) who admitted their default and their proposal to negotiate. Since redemption period has expired consolidation of the title is a matter of course. Plaintiffs (petitioners) have not shown any compelling reason to stop the bank's (respondent bank) acquisition. They cannot compel the mortgagee bank (respondent bank) to accept the amount which is not sufficient for the redemption price.”[18] (Emphasis Supplied)

On March 22, 2010, respondent court issued its first assailed Order[19], which denied petitioners' “Motion for Issuance of TRO and Writ of Injunction”[20] for lack of merit.[21]

Petitioners then filed a Motion for Reconsideration[22] of the Order[23] of March 22, 2010, which Motion was denied in respondent court's second assailed Order[24] dated May 24, 2010.

After petitioners' Motion for Reconsideration[25] of the Order[26] dated May 24, 2010 was denied by respondent court in its other assailed Order[27] of October 18, 2010, petitioners filed the Petition[28] at bench praying as follows:

“WHEREFORE, premises considered, it is respectfully prayed to this Honorable Court that:

- this petition be given due course;
- judgment be rendered annulling and setting aside the Orders March 22, 2010, March 26, 2010 and October 18, 2010;
- granting a Temporary Restraining Order and/or Writ of Preliminary Injunction to enjoin the PSBANK and the Registry of Deeds of Valenzuela City from consolidation of ownership from petitioners['] name to PSBANK involving TCT No. V-79870 while the main case for cancellation of extrajudicial foreclosure is being heard;

- petitioners also pray for costs and such other further reliefs as may be legal, equitable and just[.]”[29]

Petitioners raised the following grounds:

“IV.GROUNDS

HONORABLE RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN HE DENIED PETITIONERS['] URGENT MOTION FOR ISSUANCE OF TEMPORARY RESTRAINING ORDER AND/OR WRIT OF INJUNCTION AND ITS MOTION FOR RECONSIDERATION WHEN SHE DECLARED THAT:

1. THE COMPLAINT FOR CANCELLATION OF EXTRAJUDICIAL FORECLOSURE AS WELL AS THE MOTION FOR ISSUANCE OF TEMPORARY RESTRAINING ORDER AND/OR WRIT OF PRELIMINARY INJUNCTION IS WELL BEYOND THE PRESCRIBED PERIOD OF ONE YEAR COUNTED FROM FEBRUARY 18, 2009;

2. THE OFFER OF THE PETITIONER[S] TO REDEEM THE PROPERTY ON INSTALLMENT BASIS AND ITS (sic) OFFER TO TENDER PAYMENT IN THE AMOUNT OF P100,000.00 AND INCREASED TO P500,000.00 TO SHOW GOOD FAITH IS INEFFECTIVE SINCE NOT ONLY DID THE AMOUNT NOT INCLUDE THE INTEREST BUT IT IS BELOW PURCHASE PRICE. SUCH OFFER DID NOT EFFECT A VALID REDEMPTION, AND DEFENDANT BANK WAS JUSTIFIED IN REFUSING TO ACCEPT SUCH OFFER.”[30] (Emphasis was made in the original)

As properly posed by petitioners in their assigned ground 1., petitioners' Complaint[31] and their “Motion for Issuance of TRO and Writ of Injunction”[32] were filed within the one (1) year prescriptive period for petitioners to redeem the subject property from respondent bank.

Respondent court had ruled that petitioners' Complaint[33] and “Motion for Issuance of TRO and Writ of Injunction”[34] were filed beyond the prescriptive period, stating that:

“The arguments raised in the instant motion are but mere reiterations of the grounds already judiciously evaluated and passed upon in the court's order dated March 22, 2010. In the said order the Court has already held that the period within which to redeem the mortgaged property is within one year from and after the date of sale as provided under Section 6 of Article No. 3135 which is applicable in this case. Nowhere is it provided therein that a statement of the assessment of taxes paid and such lien chargeable to the mortgagor be required first before the redemption period begins to run. In this case the auction sale was conducted on February 18, 2009. The filing of the complaint for cancellation of the extra-judicial foreclosure as well as the motion for issuance of a temporary restraining order and or writ of preliminary injunction where the plaintiffs tendered at first the amount of P100,000.00 as partial payment of the redemption price is well beyond the prescribed period of one year counted from February 18, 2009.”[35] (Emphasis Supplied)

Prevailing over respondent court's conclusions however, is that petitioners had until March 2, 2010 to redeem the subject property from respondent bank. This is because the one (1) year redemption did not commence from the date of the foreclosure sale on February 18, 2009, but from the date when the Certificate of Sale[36] issued by respondent Sheriff was registered with the Register of Deeds on March 2, 2009[37].

That the one (1) year redemption period of extrajudicially foreclosed properties, such as the subject property, starts from the date of registration of the Certificate of Sale is in accordance with the following declaration of the Supreme Court in *Goldenway Merchandising Corporation vs. Equitable PCI Bank*, G.R. No. 195540, March 13, 2013:

“The law governing cases of extrajudicial foreclosure of mortgage is Act No. 3135, as amended by Act No. 4118. Section thereof provides:

SEC. 6. In all cases in which an extrajudicial sale is made under the special power herein before referred to, the debtor, his successors-in-interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act.

The one-year period of redemption is counted from the date of the registration of the certificate of sale. In this case, the parties provided in their real estate mortgage contract that upon petitioner's default and the latter's entire loan obligation becoming due, respondent may immediately foreclose the mortgage judicially in accordance with the Rules of Court, or extrajudicially in accordance with Act No. 3135, as amended." (Emphasis and underscoring supplied)

While petitioners' right to redeem had not yet prescribed when petitioners filed their Complaint[38] on July 24, 2009 and when they filed their "Motion for Issuance of TRO and Writ of Injunction"[39] on March 1, 2010, still, contrary to petitioners' arguments in their assigned ground 2., petitioners failed to sufficiently show their entitlement to a Temporary Restraining Order or a Writ of Injunction.

Petitioners had raised the following arguments:

"The Honorable public respondent acted with grave abuse of discretion amounting to lack or in excess of jurisdiction when she declared that the offer to redeem the property at P100,000.00 and increased to P500,000.00 is ineffective since not only did the amount include interest but is below purchase price. Such offer did not effect a valid redemption and the defendant bank was justified in refusing to accept such offer.

It must be stressed that the offer of P100,000.00 and increased to P500,000.00 was primarily made to show good faith and for purpose of holding the consolidation of title in the name of PSBANK while the main case for cancellation of extrajudicial foreclosure will be heard in due time. The said partial payment of P500,000.00 shall also constitute as partial payment by the petitioners to the PSBANK pending determination of FULL AMOUNT or the FULL REDEMPTION PRICE which to this date is still UNKNOWN and NOT YET SPECIFIC as the PSBANK has not complied with the requirements as set forth in the Certificate of sale dated February 23, 2009 xxx

xxx

The Honorable public respondent acted with grave abuse of discretion in asserting that the PSBANK is justified in refusing the payment. How can the petitioner redeem the subject property when in the first place, the ACTUAL REDEMPTION PRICE is still UNKNOWN and NOT SPECIFIC considering PSBANK failed to submit with the Office of the Clerk of Court, RTC, Valenzuela City, the amount of assessment of taxes and such other lien chargeable to the petitioner. At the outset, the petitioners should not have been required in the first place to redeem the property had the PSBANK did not hastily and prematurely foreclose the subject property. PSBANK has no legal right to foreclose the subject property as the mortgage pertains to TERM LOAN or with maturity date of June 23, 2016. At the time of auction was conducted on February 18, 2009, the term of the loan has not yet expired. The PSBANK prematurely and hastily initiated the foreclosure proceeding without first allowing the petitioner to update their obligations and also avail of repricing dated of June 23, 2011 conformably with the amortization schedule as provided by PSBank. Noteworthy to emphasize is the fact that the petitioner have paid monthly amortization in the total amount of P700,778.22 which were only debited to the account passbook of his attorney in fact. NO OFFICIAL RECEIPTS were ever given by the PSBANK."[40] (Emphasis Supplied)

Trumping petitioners' contentions however, is that petitioners failed to redeem the property from respondent bank

within the redemption period or until March 2, 2010. Records revealed that petitioners, in their Letter[41] dated January 29, 2010, manifested to respondent bank their intention to redeem the subject property on installment basis[42]. Petitioners offered to pay One Hundred Thousand Pesos (Php 100,000.00)[43], which amount they later increased to Five Hundred Thousand Pesos (Php 500,000.00)[44], as partial payment of the redemption price of Two Million Four Hundred Twenty Thousand Five Hundred Seven Eight Pesos and Forty Two Centavos (Php 2,420,578.42) that was fixed by respondent bank.[45]

However, considering that the amount that was being offered by petitioners was not the full amount of the purchase price of the property that was indicated in respondent Sheriff's Certificate of Sale[46], then petitioners' offer of redemption was ineffective. Accordingly, respondent bank was justified in refusing to accept such offer. All of these matters were as also found by respondent court in its Order[47] dated March 22, 2010, to wit:

“Considering that defendant is a banking institution, the determination of the redemption price for the foreclosed property should be governed by Section 78 of the General Banking Act, being a special and subsequent legislation which had the effect of amending Section 6 of Act No. 3135 insofar as the redemption price is concerned when the mortgagee is a bank, as in this case, or a banking or credit institution.

It was held that the amount at which the foreclosed property is redeemable is the amount due under the mortgage deed, or the outstanding obligation of the mortgagor plus interest and expenses in accordance with Section 78 of the General Banking Act.

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In this case, the real estate mortgage over plaintiffs' property was foreclosed in the amount of P1,786,185.67, and that plaintiffs offered to redeem the property on installment basis.

Tender of payment must be for the full amount of the purchase price, i.e., the amount fixed by the court in the order of execution or the amount due under the mortgage deed, as the case may be, with interest thereon at the rate specified in the mortgage; and all the costs, and judicial and other expenses incurred by the bank or institution concerned by reason of the execution and sale and as a result of the custody of said property less the income received from the property.

Thus, the offer of the plaintiff to redeem the property on installment basis and its offer to tender payment in the amount of P100,000.00 to show good faith is ineffective, since not only did the amount not include the interest but it is below the purchase price. Such offer did not effect a valid redemption, and defendant bank was justified in refusing to accept such offer.”[48] (Emphasis Supplied)

An offer of redemption by a mortgagor, such as petitioners here, must be accompanied by an actual and simultaneous tender of payment for the full amount of the purchase price paid by the winning purchaser, such as respondent bank, in order for such offer of redemption to be properly considered as a valid and effective exercise of the right of redemption. This is pursuant to the following pronouncement of the Supreme Court in *Spouses Rubin and Portia Hojas vs. Philippine Amanah Bank and Ramon Kue*, G.R. No. 193453, June 5, 2013:

“Moreover, petitioners' allegation that they had signified their intention to avail of the incentive scheme (which they have equated to their intention to redeem the property), did not amount to an exercise of redemption precluding the bank from making the public sale. In the case of *China Banking Corporation v. Martir*, this Court expounded on what constitutes a proper exercise of the right of redemption, to wit:

The general rule in redemption is that it is not sufficient that a person offering to redeem manifests his desire to do so. The statement of intention must be accompanied by an actual and simultaneous tender of payment. This constitutes the exercise of the right to repurchase.

In several cases decided by the Court where the right to repurchase was held to have been properly exercised,

there was an unequivocal tender of payment for the full amount of the repurchase price. Otherwise, the offer to redeem is ineffectual. Bona fide redemption necessarily implies a reasonable and valid tender of the entire repurchase price, otherwise the rule on the redemption period fixed by law can easily be circumvented.

Moreover, jurisprudence also characterizes a valid tender of payment as one where the full redemption price is tendered. Consequently, in this case, the offer by respondents on July 24, 1986 to redeem the foreclosed properties for P1,872,935 and the subsequent consignment in court of P1,500,000 on August 27, 1986, while made within the period of redemption, was ineffective since the amount offered and actually consigned not only did not include the interest but was in fact also way below the P2,782,554.66 paid by the highest bidder/purchaser of the properties during the auction sale.” (Emphasis Supplied)

Considering that petitioners' offer of redemption could not be properly considered as a valid and effective exercise of the right of redemption, then petitioners failed to sufficiently show any reason for respondent court to issue a Temporary Restraining Order or a Writ of Injunction in order to enjoin private respondent bank from consolidating its ownership over the subject property.

Indeed, the rule is settled that the grant or denial of injunctive relief in a pending case, such as the case below, “rests on the sound discretion of the court taking cognizance of the case.” This is so, especially considering that the assessment and evaluation of the evidence presented by the party seeking injunctive relief, such as petitioners here, involve findings of fact which are “left to the xxx court for conclusive determination” and therefore, “must not be interfered with.”[49]

After careful consideration of all the facts, arguments, and issues appearing on the records, as well as of the pertinent laws and jurisprudence, and in accordance with what is best determined to be proper under the circumstances, the following disposition is therefore made on these matters.

IN VIEW OF ALL THESE, the Petition for Certiorari is DENIED.

SO ORDERED.

Dicdican (Chairman) and Dimagiba,[*] JJ., concur.

[*] Vice J. Paredes per Office Order No. 34-14-RSF

[1] “Petition for Certiorari under Rule 65 of the Rules of Court With Prayer for Issuance of a Temporary Restraining Order/Writ of [P]reliminary [I]njunction, Rollo, pp. 3-15

[2] Rollo, pp. 19-21

[3] Rollo, p. 36

[4] Rollo, p. 22

[5] Rollo, pp. 23-24

[6] Rollo, pp. 58-61; 74-79

[7] “Entry No. 150639”, Rollo, p. 26

[8] “SPECIAL POWER OF ATTORNEY” dated May 2, 2006, Rollo, pp. 32-33

[9] Rollo, pp. 28-31

[10] Rollo, pp. 25-27

- [11] Rollo, pp. 26, 28
- [12] Rollo, pp. 19-21
- [13] Rollo, p. 19
- [14] Rollo, pp. 36-41
- [15] Rollo, p. 36
- [16] Rollo, pp. 53-57
- [17] Rollo, pp. 19-21
- [18] Rollo, pp. 19-20
- [19] Rollo, pp. 19-21
- [20] Rollo, pp. 53-57
- [21] Rollo, p. 21
- [22] Rollo, pp. 58-61
- [23] Rollo, pp. 19-21
- [24] Rollo, p. 22
- [25] Rollo, pp. 74-79
- [26] Rollo, p. 22
- [27] Rollo, pp. 23-24
- [28] "Petition for Certiorari under Rule 65 of the Rules of Court With Prayer for Issuance of a Temporary Restraining Order/Writ of [P]reliminary [I]njunction, Rollo, pp. 3-15
- [29] Rollo, p. 12
- [30] Rollo, p. 8
- [31] Rollo, pp. 36-41
- [32] Rollo, pp. 53-57
- [33] Rollo, pp. 36-41
- [34] Rollo, pp. 53-57
- [35] Rollo, pp. 23-24
- [36] Rollo, pp. 34-35
- [37] "Entry No. 173185/V-79780", Rollo, p. 27
- [38] Rollo, pp. 36-41
- [39] Rollo, pp. 53-57
- [40] Rollo, pp. 10-11

[41] Rollo, p. 52

[42] Rollo, p. 52

[43] Rollo, p. 58

[44] Rollo, p. 60, 78

[45] Rollo, p. 53

[46] Rollo, pp. 34-35

[47] Rollo, pp. 19-21

[48] Rollo, pp. 20-21

[49] Australian Professional Realty, Inc., Jesus Garcia, and Lydia Marciano vs. Municipality of Padre Garcia Batangas Province, G.R. No. 183367, March 14, 2012

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