

LEE CHUY REALTY CORPORATION, PETITIONER, VS. HON. COURT OF APPEALS AND MARC REALTY AND DEVELOPMENT CORPORATION, RESPONDENTS.

G.R. No. 104114. December 04, 1995

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

Is a judicial action to redeem coupled with consignation of the price within the redemption period equivalent to a formal offer to redeem under Art. 1623 in relation to Art. 1620 of the Civil Code? Corollarily, is a formal offer to redeem accompanied with tender of payment a condition precedent to the filing of an action for the valid exercise of the right of legal redemption? Plainly stated, is the filing of the action with consignation equivalent to a formal offer to redeem?

A valuable piece of land in Malhacan, Meycauayan, Bulacan, with an area of 24,576 square meters and covered by OCT No. 0-5290 is disputed by petitioner Lee Chuy Realty Corporation (LEE CHUY REALTY) and private respondent Marc Realty and Development Corporation (MARC REALTY). Originally the property was co-owned by Ruben Jacinto to the extent of one-sixth and Dominador, Arsenio, Liwayway, all surnamed Bascara, and Ernesto Jacinto who collectively owned the remaining five-sixths.

On 4 February 1981 Ruben Jacinto sold his one-sixth pro-indiviso share to LEE CHUY REALTY. The sale was registered on 30 April 1981. On 5 May 1989 the Bascaras and Ernesto Jacinto also sold their share to MARC REALTY. The sale was registered on 16 October 1989.

LEE CHUY REALTY claims that it was never informed of the existence of the sale between MARC REALTY on one hand and the Bascaras and Jacinto on the other, and that on the contrary it was only upon inquiry from the Register of Deeds of Bulacan that the sale was brought to its attention. MARC REALTY contends otherwise. It insists that LEE CHUY REALTY was verbally notified of the sale and was in fact given a copy of the deed of sale.

On 13 November 1989 LEE CHUY REALTY filed a complaint for legal redemption against MARC REALTY[1] and consigned in court a manager's check for 614,400. In its Amended Answer with Counterclaim with Motion to Dismiss, MARC REALTY insisted that the complaint be dismissed for failure to state a cause of action there being no allegation of prior valid tender of payment nor a prior valid notice of consignation.

On 26 December 1990 the trial court[2] ruled in favor of LEE CHUY REALTY holding that there was a prior valid tender of payment and consignation. It further decreed that "(n)either a separate offer to redeem nor a formal notice of consignation are (sic) necessary for the reason that the filing of the action itself, within the period of redemption, is equivalent to a formal offer to redeem." [3]

On 1 February 1991 MARC REALTY filed a Petition for Certiorari, Prohibition with Temporary Restraining Order and/or Writ of Preliminary Injunction with this Court. The petition however was referred to the Court of

Appeals pursuant to Sec. 9, B.P. Blg. 129.

On 22 November 1991 the Court of Appeals rendered a decision reversing that of the lower court and ruling that "a prior tender or offer of redemption is a prerequisite or precondition to the filing of an action for legal redemption." It further ruled that "there must be tender of the redemption price within the required period x x x because the policy of the law is not to leave the purchaser's title in uncertainty beyond the established 30-day period." LEE CHUY REALTY filed a motion for reconsideration but it was denied hence the present petition.

MARC REALTY contends that prior tender of payment is a condition precedent to the filing of an action in court in order to validly exercise the right of legal redemption. LEE CHUY REALTY however argues that the filing of the action itself is equivalent to a formal offer to redeem, which is a condition precedent to the valid exercise of the right of legal redemption.

We sustain LEE CHUY REALTY. Arts. 1620 and 1623 of the Civil Code on legal redemption provide:

Art. 1620. A co-owner of a thing may exercise the right of redemption in case the shares of all the other co-owners or of any of them are sold to a third person. If the price of the alienation is grossly excessive, the redemptioner shall pay only a reasonable one.

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Art. 1623. The right of legal pre-emption or redemption shall not be exercised except within thirty days from the notice in writing by the prospective vendor, or by the vendor, as the case may be. The deed of sale shall not be recorded in the Registry of Property unless accompanied by an affidavit of the vendor that he has given written notice thereof to all possible redemptioners.

MARC REALTY would apply the ruling in *Cabrera v. Villanueva*[4] and *De la Merced v. De Guzman*[5] where an offer to redeem was required for the exercise of the right of redemption. On the other hand, LEE CHUY REALTY anchors its claim on *Tioseco v. Court of Appeals*,[6] *Tolentino v. Court of Appeals*,[7] and *Belisario v. Intermediate Appellate Court*. [8] Specifically, in *Cabrera v. Villanueva*[9] we held that for the legal and effective exercise of the right of legal redemption one must make the offer within the period set in Art. 1623. In other words, if no claim or offer is made within thirty (30) days from written notice, no action may be allowed to enforce the right of redemption. But in *Tolentino v. Court of Appeals*, [10] *Tioseco v. Court of Appeals* [11] and *Belisario v. Intermediate Appellate Court* [12] we adopted the view that a formal offer to redeem, accompanied by a bona fide tender of the redemption price, is not essential where the right to redeem is exercised through a judicial action within the redemption period and simultaneously depositing the redemption price. The formal offer to redeem accompanied by a bona fide tender of the redemption price prescribed by law is only essential to preserve the right of redemption for future enforcement even beyond the period of redemption. The filing of the action itself within the period of redemption is equivalent to a formal offer to redeem.

A judicious scrutiny of the cases herein cited impugns the impression of MARC REALTY that they enunciate conflicting doctrines. On the contrary, we view them as complementing one another. The Court of Appeals erroneously concluded that a prior tender or offer of redemption is a prerequisite or precondition to the filing of the action for legal redemption, notwithstanding prevailing jurisprudence holding that to avail of the right of redemption what is essential is to make an offer to redeem within the prescribed period. There is actually no prescribed form for an offer to redeem to be properly effected. Hence, it can either be through a formal tender with consignment, or by filing a complaint in court coupled with consignment of the redemption price within the prescribed period. What is condition precedent to a valid exercise of the right of legal redemption is either the formal tender with consignment or the filing of a complaint in court. What is paramount is the availment of the

fixed and definite period within which to exercise the right of legal redemption.[13]

In *Hulganza v. Court of Appeals*[14] the Court, citing previous decisions, declared that the formal offer to redeem, accompanied by a bona fide tender of the redemption price, within the prescribed period is only essential to preserve the right of redemption for future enforcement beyond such period of redemption and within the period prescribed for the action by the statute of limitations. Where, as in the instant case, the right to redeem is exercised through judicial action within the reglementary period the formal offer to redeem, accompanied by a bona fide tender of the redemption price, while proper, may be unessential. The filing of the action itself is equivalent to a formal offer to redeem.

In sum, the formal offer to redeem is not a distinct step or condition sine qua non to the filing of the action in Court for the valid exercise of the right of legal redemption. What constitutes a condition precedent is either a formal offer to redeem or the filing of an action in court together with the consignment of the redemption price within the reglementary period.

The doctrine in *Tolentino*, *Tioseco* and *Belisario* cases was jettisoned by the Court of Appeals on the ground that they do not involve legal redemption by a co-owner but by a mortgagor. It concluded that the application of the rules on legal redemption by a co-owner differs from the legal redemption by a mortgagor. But the law does not distinguish; neither should we. For sure, the principle in the aforecited cases is applicable regardless of whether the redemptioner is a co-owner or a mortgagor. Public policy favors redemption regardless of whether the redemptioner is a co-owner or mortgagor, although perhaps with unequal force and effect since each is given a fixed but different period. A co-owner desirous of exercising his right of legal redemption is given a period of thirty (30) days from notice of the sale within which to avail of the right to redeem.[15] Under the free patent or homestead provisions of the Public Land Act a period of five (5) years from the date of conveyance is provided,[16] the five-year period to be reckoned from the date of the sale and not from the date of registration in the office of the Register of Deeds.[17] The redemption of extrajudicially foreclosed properties, on the other hand, is exercisable within one (1) year from the date of the auction sale as provided for in Act No. 3135.[18]

WHEREFORE, the petition for certiorari is GRANTED. The decision of respondent Court of Appeals in CA-G.R. SP No. 24220 dated 22 November 1991 is REVERSED and SET ASIDE. The decision of the Regional Trial Court of Malolos, Bulacan, Br. 7, in Civil Case No. 661-M-89 dated 26 December 1990 holding that the filing of the action for legal redemption coupled with the consignment of the redemption price is equivalent to a formal offer to redeem as a condition precedent to the valid exercise of the right of legal redemption, is REINSTATED.

Let the records of this case be REMANDED to the court of origin for further proceedings in the light of this pronouncement.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Docketed as Civil Case No. 661-M-89, RTC Malolos, Br. 7; Annex "D," Rollo, pp. 38-40.

[2] Presided by Judge Danilo A. Manalastas; Annex "F," Records, p. 54.

[3] Citing *Tolentino v. Court of Appeals*, G.R. No. 50405-06, 5 August 1981, 106 SCRA 513.

[4] G.R. No. 75069, 15 April 1988, 160 SCRA 672.

[5] No. L-36626, 15 August 1988, 160 SCRA 87.

[6] G.R. No. 66597, 29 August 1986, 143 SCRA 705.

[7] G.R. No. 50405, 5 August 1981, 106 SCRA 513.

[8] G.R. No. 73503, 30 August 1988, 165 SCRA 101.

[9] Supra, p. 677.

[10] Supra, p. 526.

[11] Supra, pp. 709, 710.

[12] Supra, p. 108.

[13] Tolentino, Arturo M., Commentaries and Jurisprudence on the Civil Code of the Philippines, Vol. 5, 1992 ed., pp. 185, 187.

[14] G.R. No. 56196, 7 January 1986, 147 SCRA 77.

[15] Art. 1623, Civil Code.

[16] Sec. 119, Act No. 141.

[17] Peña, Narciso, Philippine Law on Natural Resources, 1992 Revised Ed., p. 35, citing *Galanza v. Nuesa*, No. L-6628, 31 August 1954, 95 Phil. 713.

[18] supra footnote 17, p. 37.

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