IBAAN RURAL BANK INC., PETITIONER, VS. THE COURT OF APPEALS AND MR. AND MRS. RAMON TARNATE, RESPONDENTS.

G.R. No. 123817. December 17, 1999

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review under Rule 45 of the Rules of Court seeks to set aside the decision of the Court of Appeals in CA-G.R. CV No. 32984 affirming with modification the decision of the Regional Trial Court of Batangas, Branch 2, in Civil Case No. 534, as well as the resolution of the Court of Appeals denying petitioner's motion for reconsideration.

The facts are as follows:

Spouses Cesar and Leonila Reyes were the owners of three (3) lots covered by Transfer Certificate of Title (TCT) Nos. 33206, 33207 and 33208 of the Register of Deeds of Lipa City. On March 21, 1976, the spouses mortgaged these lots to Ibaan Rural Bank, Inc. [herein petitioner]. On June 11, 1976, with the knowledge and consent of the petitioner, the spouses as sellers, and Mr. and Mrs. Ramon Tarnate [herein private respondents] as buyers, entered into a Deed of Absolute Sale with Assumption of Mortgage of the lots in question. Private respondents failed to pay the loan and the bank extra-judicially foreclosed on the mortgaged lots. The Provincial Sheriff conducted a public auction of the lots and awarded the lots to the bank, the sole bidder. On December 13, 1978, the Provincial Sheriff issued a Certificate of Sale which was registered on October 16, 1979. The certificate stated that the redemption period expires two (2) years from the registration of the sale. No notice of the extrajudicial foreclosure was given to the private respondents. On September 23, 1981, private respondents offered to redeem the foreclosed lots and tendered the redemption amount of P77,737.45. However, petitioner Bank refused the redemption on the ground that it had consolidated its titles over the lots. The Provincial Sheriff also denied the redemption on the ground that private respondents did not appear on the title to be the owners of the lots.

Private respondents filed a complaint to compel the bank to allow their redemption of the foreclosed lots. They alleged that the extra-judicial foreclosure was null and void for lack of valid notice and demand upon them. They further argued that they were entitled to redeem the foreclosed lots because they offered to redeem and tendered the redemption price before October 16, 1981, the deadline of the 2-year redemption period.

The bank opposed the redemption, contending that the private respondents had no right to redeem the lots because they were not the real parties in interest; that at the time they offered to redeem on September 23, 1981, the right to redeem had prescribed, as more than one year had elapsed from the registration of the Certificate of Sale on October 16, 1979; that there was no need of personal notice to them because under Section 3 of Act 3135, only the posting of notice of sale at three public places of the municipality where the properties are located was required.[1]

After trial on the merits, the lower court ruled in favor of herein private respondents and against the petitioner, thus:

> "WHEREFORE, in view of the foregoing, the Court renders judgment in favor of the plaintiffs and against the defendants, to wit:
>
> (a) Ordering the defendant Ibaan Rural Bank Inc., and Provincial Sheriff of Batangas for the redemption of the foreclosed properties covered by Transfer Certificate of Title Nos. T-33206, T-33207 and T-33208 of the Registry of Deeds, Lipa City by the plaintiffs by paying the mortgaged obligation.
>
> (b) Ordering the Provincial Sheriff of Batangas to cancel the Transfer Certificate of Titles issued to defendant Ibaan Rural Bank, Inc. and its successors-in-interest and to issue the corresponding Transfer of Certificate of Titles to plaintiffs upon payment of the required legal fees.
>
> (c) Ordering the defendant Ibaan Rural Bank, Inc., to pay plaintiffs moral damages in the amount of P200,000.00, and attorney's fees in the sum of P20,000.00.
>
> All other claims not having been duly proved are ordered DISMISSED.
>
> Without pronouncement as to costs.
>
> SO ORDERED".[2]

On appeal, the Court of Appeals affirmed with modification the decision of the lower court. The dispositive portion of the CA decision reads:

> "WHEREFORE, the decision appealed from is hereby AFFIRMED with the following modifications:
>
> 1. The register of Deeds of Lipa City is hereby ordered to cancel the Certificate of Titles issued to defendant Ibaan Rural Bank, Inc. and its successor-in-interest and to issue the corresponding Transfer Certificate of Title to plaintiffs-appellees upon proper redemption of the properties and payment of the required legal fees.
>
> 2. Defendant Ibaan Rural bank, is hereby ordered to pay to plaintiffs the amount of P15,000.00 as attorney's fees.
>
> 3. The moral damages awarded in favor of plaintiffs is hereby ordered deleted.
>
> SO ORDERED."[3]

A timely Motion for Reconsideration was filed by the petitioner but the same was denied in a Resolution dated February 14, 1996. Hence, this petition.

Petitioner assigns the following errors:

> 1. THE RESPONDENT COURT ERRED AND, ACCORDINGLY, THE PETITIONER IS ENTITLED TO A REVIEW OF ITS DECISION, WHEN IT SUSTAINED AVAILABILITY OF REDEMPTION DESPITE THE LAPSE OF ONE YEAR FROM DATE OF REGISTRATION OF THE CERTIFICATE OF SALE.
>
> 2. THE RESPONDENT COURT ERRED AND, ACCORDINGLY, THE PETITIONER IS ENTITLED TO A REVIEW OF ITS DECISION, WHEN THE RESPONDENT COURT ALLOWED RECOVERY OF ATTORNEY'S FEES SIMPLY BECAUSE THE PETITIONER DID NOT ALLOW THE PRIVATE RESPONDENTS TO EXERCISE BELATEDLY REDEMPTION OF THE FORECLOSED PROPERTY.[4]

Essentially, two issues are raised for resolution. What was the period of redemption: two years as unilaterally fixed by the sheriff in the contract, or one year as fixed by law? May respondent court properly award attorney's fees solely on the basis of the refusal of the bank to allow redemption?

We now resolve these issues.

When petitioner received a copy of the Certificate of Sale registered in the Office of the Register of Deeds of Lipa

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City, it had actual and constructive knowledge of the certificate and its contents.[5] For two years, it did not object to the two-year redemption period provided in the certificate. Thus, it could be said that petitioner consented to the two-year redemption period specially since it had time to object and did not. When circumstances imply a duty to speak on the part of the person for whom an obligation is proposed, his silence can be construed as consent.[6] By its silence and inaction, petitioner misled private respondents to believe that they had two years within which to redeem the mortgage. After the lapse of two years, petitioner is estopped from asserting that the period for redemption was only one year and that the period had already lapsed. Estoppel in pais arises when one, by his acts, representations or admissions, or by his own silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts.[7]

In affirming the decision of the trial court, the Court of Appeals relied on Lazo vs. Republic Surety and Insurance Co., Inc.,[8] where the court held that the one year period of redemption provided in Act No. 3135 is only directory and can be extended by agreement of the parties. True, but it bears noting that in Lazo the parties voluntarily agreed to extend the redemption period. Thus, the concept of legal redemption was converted by the parties in Lazo into conventional redemption. This is not so in the instant case. There was no voluntary agreement. In fact, the sheriff unilaterally and arbitrarily extended the period of redemption to two (2) years in the Certificate of Sale. The parties were not even privy to the extension made by the sheriff. Nonetheless, as above discussed, the bank can not after the lapse of two years insist that the redemption period was one year only.

Additionally, the rule on redemption is liberally interpreted in favor of the original owner of a property. The fact alone that he is allowed the right to redeem clearly demonstrates the solicitousness of the law in giving him another opportunity, should his fortune improve, to recover his lost property.[9]

Lastly, petitioner is a banking institution on whom the public expects diligence, meticulousness and mastery of its transactions. Had petitioner diligently reviewed the Certificate of Sale it could have easily discovered that the period was extended one year beyond the usual period for redemption. Banks, being greatly affected with public interest, are expected to exercise a degree of diligence in the handling of its affairs higher than that expected of an ordinary business firm.[10]

On the second issue, the award of attorney's fees must be disallowed for lack of legal basis. The fact that private respondents were compelled to litigate and incur expenses to protect and enforce their claim does not justify the award of attorney's fees. The general rule is that attorney's fees cannot be recovered as part of damages because of the public policy that no premium should be placed on the right to litigate.[11] The award of attorney's fees must be deleted where the award of moral and exemplary damages are eliminated.[12]

WHEREFORE, the decision of the Court of Appeals in CA-G.R. CV No. 32984 is AFFIRMED, with the MODIFICATION that the award of attorney's fees is deleted. No pronouncement as to costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

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[1] Rollo, p. 16.

[2] Id. at 14-15, 17.

[3] Id. at 23.

[4] Id. at 7.

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[5] Id. at 6.

[6] Tolentino, Commentaries and Jurisprudence in the Civil Code of the Philippines, Vol. IV, p. 455 citing 1 Ruggiero 255-256.

[7] Roblett Industrial Construction Corporation vs. Court of Appeals, 266 SCRA 71, 76 (1997).

[8] 31 SCRA 329, 340 (1970).

[9] De los Reyes vs. IAC, 176 SCRA 394, 403 (1989).

[10] Lim Sio Bio vs. Court of Appeals, 221 SCRA 307, 316 (1993).

[11] Philippine Air Lines vs. Miano, 242 SCRA 235, 240 (1995).

[12] Ibid.

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