

**SPOUSES BONIFACIO AND FAUSTINA PARAY, AND VIDAL ESPELETA,
PETITIONERS, VS. DRA. ABDULIA C. RODRIGUEZ, MIGUELA R.
JARIOL ASSISTED BY HER HUSBAND ANTOLIN JARIOL, SR.,
LEONORA NOLA...**

G.R. No. 132287. January 24, 2006

Ponente: TINGA, J.

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TINGA, J.:

The assailed decision of the Court of Appeals took off on the premise that pledged shares of stock auctioned off in a notarial sale could still be redeemed by their owners. This notion is wrong, and we thus reverse.

The facts, as culled from the record, follow.

Respondents were the owners, in their respective personal capacities, of shares of stock in a corporation known as the Quirino-Leonor-Rodriguez Realty Inc.[1] Sometime during the years 1979 to 1980, respondents secured by way of pledge of some of their shares of stock to petitioners Bonifacio and Faustina Paray ("Parays") the payment of certain loan obligations. The shares pledged are listed below:

Miguel Rodriguez Jariol

1,000 shares covered by Stock Certificates No. 011, 060, 061 & 062;

Abdulia C. Rodriguez

300 shares covered by Stock Certificates No. 023 & 093;

Leonora R. Nolasco

407 shares covered by Stock Certificates No. 091 & 092;

Genoveva Soronio

699 shares covered by Stock Certificates No. 025, 059 & 099;

Dolores R. Soberano

699 shares covered by Stock Certificates No. 021, 053, 022 & 097;

Julia Generoso

1,100 shares covered by Stock Certificates No. 085, 051, 086 & 084;

Teresita Natividad

440 shares covered by Stock Certificates Nos. 054 & 055[2]

When the Parays attempted to foreclose the pledges on account of respondents' failure to pay their loans,

respondents filed complaints with the Regional Trial Court (RTC) of Cebu City. The actions, which were consolidated and tried before RTC Branch 14, Cebu City, sought the declaration of nullity of the pledge agreements, among others. However the RTC, in its decision[3] dated 14 October 1988, dismissed the complaint and gave "due course to the foreclosure and sale at public auction of the various pledges subject of these two cases." [4] This decision attained finality after it was affirmed by the Court of Appeals and the Supreme Court. The Entry of Judgment was issued on 14 August 1991.

Respondents then received Notices of Sale which indicated that the pledged shares were to be sold at public auction on 4 November 1991. However, before the scheduled date of auction, all of respondents caused the consignment with the RTC Clerk of Court of various amounts. It was claimed that respondents had attempted to tender these payments to the Parays, but had been rebuffed. The deposited amounts were as follows:

Abdulia C. Rodriguez

P 120,066.66 .. 14 Oct. 1991

Leonora R. Nolasco

277,381.82 .. 14 Oct. 1991

Genoveva R. Soronio

425,353.50 .. 14 Oct. 1991

38,385.44 .. 14 Oct. 1991

Julia R. Generoso

638,385.00 .. 25 Oct. 1991

Teresita R. Natividad

264,375.00 .. 11 Nov. 1991

Dolores R. Soberano

12,031.61.. 25 Oct. 1991

520,216.39 ..11 Nov. 1991

Miguela Jariol

490,000.00.. 18 Oct. 1991

88,000.00 ..18 Oct. 1991[5]

Notwithstanding the consignations, the public auction took place as scheduled, with petitioner Vidal Espeleta successfully bidding the amount of P6,200,000.00 for all of the pledged shares. None of respondents participated or appeared at the auction of 4 November 1991.

Respondents instead filed on 13 November 1991 a complaint seeking the declaration of nullity of the concluded public auction. The complaint, docketed as Civil Case No. CEB-10926, was assigned to Branch 16 of the Cebu City RTC. Respondents argued that their tender of payment and subsequent consignations served to extinguish their loan obligations and discharged the pledge contracts. Petitioners countered that the auction sale was conducted pursuant to the final and executory judgment in Civil Cases Nos. R-20120 and 20131, and that the tender of payment and consignations were made long after their obligations had fallen due.

The Cebu City RTC dismissed the complaint, expressing agreement with the position of the Parays.[6] It held, among others that respondents had failed to tender or consign payments within a reasonable period after default and that the proper remedy of respondents was to have participated in the auction sale.[7]The Court of Appeals Eighth Division however reversed the RTC on appeal, ruling that the consignations extinguished the loan obligations and the subject pledge contracts; and the auction sale of 4 November 1991 as null and void.[8] Most crucially, the appellate court chose to uphold the sufficiency of the consignations owing to an imputed policy of the law that favored redemption and mandated a liberal construction to redemption laws. The attempts at payment by respondents were characterized as made in the exercise of the right of redemption.

The Court of Appeals likewise found fault with the auction sale, holding that there was a need to individually sell the various shares of stock as they had belonged to different pledgors. Thus, it was observed that the minutes of the auction sale should have specified in detail the bids submitted for each of the shares of the pledgors for the purpose of knowing the price to be paid by the different pledgors upon redemption of the auctioned sales of stock.

Petitioners now argue before this Court that they were authorized to refuse as they did the tender of payment since they were undertaking the auction sale pursuant to the final and executory decision in Civil Cases Nos. R-20120 and 20131, which did not authorize the payment of the principal obligation by respondents. They point out that the amounts consigned could not extinguish the principal loan obligations of respondents since they were not sufficient to cover the interests due on the debt. They likewise argue that the essential procedural requisites for the auction sale had been satisfied.

We rule in favor of petitioners.

The fundamental premise from which the appellate court proceeded was that the consignations made by respondents should be construed in light of the rules of redemption, as if respondents were exercising such right. In that perspective, the Court of Appeals made three crucial conclusions favorable to respondents: that their act of consigning the payments with the RTC should be deemed done in the exercise of their right of redemption; that the buyer at public auction does not ipso facto become the owner of the pledged shares pending the lapse of the one-year redemptive period; and that the collective sale of the shares of stock belonging to several individual owners without specification of the apportionment in the applications of payment deprives the individual owners of the opportunity to know of the price they would have to pay for the purpose of exercising the right of redemption.

The appellate court's dwelling on the right of redemption is utterly off-tangent. The right of redemption involves payments made by debtors after the foreclosure of their properties, and not those made or attempted to be made, as in this case, before the foreclosure sale. The proper focus of the Court of Appeals should have been whether the consignations made by respondents sufficiently acquitted them of their principal obligations. A pledge contract is an accessory contract, and is necessarily discharged if the principal obligation is extinguished.

Nonetheless, the Court is now confronted with this rather new fangled theory, as propounded by the Court of Appeals, involving the right of redemption over pledged properties. We have no hesitation in pronouncing such theory as discreditable.

Preliminarily, it must be clarified that the subject sale of pledged shares was an extrajudicial sale, specifically a notarial sale, as distinguished from a judicial sale as typified by an execution sale. Under the Civil Code, the foreclosure of a pledge occurs extrajudicially, without intervention by the courts. All the creditor needs to do, if the credit has not been satisfied in due time, is to proceed before a Notary Public to the sale of the thing pledged.[9]

In this case, petitioners attempted as early as 1980 to proceed extrajudicially with the sale of the pledged shares by public auction. However, extrajudicial sale was stayed with the filing of Civil Cases No. R-20120 and 20131, which sought to annul the pledge contracts. The final and executory judgment in those cases affirmed the pledge contracts and disposed them in the following fashion:

WHEREFORE, premises considered, judgment is hereby rendered dismissing the complaints at bar, and -

(1) Declaring the various pledges covered in Civil Cases Nos. R-20120 and R-20131 valid and effective; and

(2) Giving due course to the foreclosure and sale at public auction of the various pledges subject of these two cases.

Costs against the plaintiffs.

SO ORDERED.[10]

The phrase "giving due course to the foreclosure and sale at public auction of the various pledges subject of these two cases" may give rise to the impression that such sale is judicial in character. While the decision did authorize the sale by public auction, such declaration could not detract from the fact that the sale so authorized is actually extrajudicial in character. Note that the final judgment in said cases expressly did not direct the sale by public auction of the pledged shares, but instead upheld the right of the Parays to conduct such sale at their own volition.

Indeed, as affirmed by the Civil Code,[11] the decision to proceed with the sale by public auction remains in the sole discretion of the Parays, who could very well choose not to hold the sale without violating the final judgments in the aforementioned civil cases. If the sale were truly in compliance with a final judgment or order, the Parays would have no choice but to stage the sale for then the order directing the sale arises from judicial compulsion. But nothing in the dispositive portion directed the sale at public auction as a mandatory recourse, and properly so since the sale of pledged property in public auction is, by virtue of the Civil Code, extrajudicial in character.

The right of redemption as affirmed under Rule 39 of the Rules of Court applies only to execution sales, more precisely execution sales of real property.

The Court of Appeals expressly asserted the notion that pledged property, necessarily personal in character, may be redeemed by the creditor after being sold at public auction. Yet, as a fundamental matter, does the right of redemption exist over personal property? No law or jurisprudence establishes or affirms such right. Indeed, no such right exists.

The right to redeem property sold as security for the satisfaction of an unpaid obligation does not exist preternaturally. Neither is it predicated on proprietary right, which, after the sale of property on execution, leaves the judgment debtor and vests in the purchaser. Instead, it is a bare statutory privilege to be exercised only by the persons named in the statute.[12]

The right of redemption over mortgaged real property sold extrajudicially is established by Act No. 3135, as amended. The said law does not extend the same benefit to personal property. In fact, there is no law in our statute books which vests the right of redemption over personal property. Act No. 1508, or the Chattel Mortgage Law, ostensibly could have served as the vehicle for any legislative intent to bestow a right of redemption over personal property, since that law governs the extrajudicial sale of mortgaged personal property, but the statute is definitely silent on the point. And Section 39 of the 1997 Rules of Civil Procedure, extensively relied upon by the Court of Appeals, starkly utters that the right of redemption applies to real properties, not personal properties, sold on execution.

Tellingly, this Court, as early as 1927, rejected the proposition that personal property may be covered by the right of redemption. In *Sibal 1.v. Valdez*,^[13] the Court ruled that sugar cane crops are personal property, and thus, not subject to the right of redemption.^[14] No countervailing statute has been enacted since then that would accord the right of redemption over personal property, hence the Court can affirm this decades-old ruling as effective to date.

Since the pledged shares in this case are not subject to redemption, the Court of Appeals had no business invoking and applying the inexistent right of redemption. We cannot thus agree that the consigned payments should be treated with liberality, or somehow construed as having been made in the exercise of the right of redemption. We also must reject the appellate court's declaration that the buyer of at the public auction is not "ipso facto" rendered the owner of the auctioned shares, since the debtor enjoys the one-year redemptive period to redeem the property. Obviously, since there is no right to redeem personal property, the rights of ownership vested unto the purchaser at the foreclosure sale are not entangled in any suspensive condition that is implicit in a redemptive period.

The Court of Appeals also found fault with the apparent sale in bulk of the pledged shares, notwithstanding the fact that these shares were owned by several people, on the premise the pledgors would be denied the opportunity to know exactly how much they would need to shoulder to exercise the right to redemption. This concern is obviously rendered a non-issue by the fact that there can be no right to redemption in the first place. Rule 39 of the Rules of Court does provide for instances when properties foreclosed at the same time must be sold separately, such as in the case of lot sales for real property under Section 19. However, these instances again pertain to execution sales and not extrajudicial sales. No provision in the Rules of Court or in any law requires that pledged properties sold at auction be sold separately.

On the other hand, under the Civil Code, it is the pledgee, and not the pledgor, who is given the right to choose which of the items should be sold if two or more things are pledged.^[15] No similar option is given to pledgors under the Civil Code. Moreover, there is nothing in the Civil Code provisions governing the extrajudicial sale of pledged properties that prohibits the pledgee of several different pledge contracts from auctioning all of the pledged properties on a single occasion, or from the buyer at the auction sale in purchasing all the pledged properties with a single purchase price. The relative insignificance of ascertaining the definite apportionments of the sale price to the individual shares lies in the fact that once a pledged item is sold at auction, neither the pledgee nor the pledgor can recover whatever deficiency or excess there may be between the purchase price and the amount of the principal obligation.^[16]

A different ruling though would obtain if at the auction, a bidder expressed the desire to bid on a determinate number or portion of the pledged shares. In such a case, there may lie the need to ascertain with particularity which of the shares are covered by the bid price, since not all of the shares may be sold at the auction and correspondingly not all of the pledge contracts extinguished. The same situation also would lie if one or some of the owners of the pledged shares participated in the auction, bidding only on their respective pledged shares. However, in this case, none of the pledgors participated in the auction, and the sole bidder cast his bid for all of the shares. There obviously is no longer any practical reason to apportion the bid price to the respective shares, since no matter how slight or significant the value of the purchase price for the individual share is, the sale is completed, with the pledgor and the pledgee not entitled to recover the excess or the deficiency, as the case may be. To invalidate the subject auction solely on this point serves no cause other than to celebrate formality for formality's sake.

Clearly, the theory adopted by the Court of Appeals is in shambles, and cannot be resurrected. The question though yet remains whether the consignations made by respondents extinguished their respective pledge contracts in favor of the Parays so as to enjoin the latter from auctioning the pledged shares.

There is no doubt that if the principal obligation is satisfied, the pledges should be terminated as well. Article 2098 of the Civil Code provides that the right of the creditor to retain possession of the pledged item exists only until the debt is paid. Article 2105 of the Civil Code further clarifies that the debtor cannot ask for the return of the thing pledged against the will of the creditor, unless and until he has paid the debt and its interest. At the same time, the right of the pledgee to foreclose the pledge is also established under the Civil Code. When the credit has not been satisfied in due time, the creditor may proceed with the sale by public auction under the procedure provided under Article 2112 of the Code.

Respondents argue that their various consignations made prior to the auction sale discharged them from the loan and the pledge agreements. They are mistaken.

Petitioners point out that while the amounts consigned by respondents could answer for their respective principal loan obligations, they were not sufficient to cover the interests due on these loans, which were pegged at the rate of 5% per month or 60% per annum. Before this Court, respondents, save for Dolores Soberano, do not contest this interest rate as alleged by petitioners. Soberano, on the other hand, challenges this interest rate as "usurious."^[17]

The particular pledge contracts did not form part of the records elevated to this Court. However, the 5% monthly interest rate was noted in the statement of facts in the 14 October 1988 RTC Decision which had since become final. Moreover, the said decision pronounced that even assuming that the interest rates of the various loans were 5% per month, "it is doubtful whether the interests so charged were exorbitantly or excessively usurious. This is because for sometime now, usury has become "legally inexistent.""^[18] The finality of this 1988 Decision is a settled fact, and thus the time to challenge the validity of the 5% monthly interest rate had long passed. With that in mind, there is no reason for the Court to disagree with petitioners that in order that the consignment could have the effect of extinguishing the pledge contracts, such amounts should cover not just the principal loans, but also the 5% monthly interests thereon.

It bears noting that the Court of Appeals also ruled that respondents had satisfied the requirements under Section 18, Rule 39, which provides that the judgment obligor may prevent the sale by paying the amount required by the execution and the costs that have been incurred therein.^[19] However, the provision applies only to execution sales, and not extra-judicial sales, as evidenced by the use of the phrases "sale of property on execution" and "judgment obligor." The reference is inappropos, and even if it were applicable, the failure of the payment to cover the interests due renders it insufficient to stay the sale.

The effect of the finality of the judgments in Civil Cases Nos. R-20120 and R-20131 should also not be discounted. Petitioners' right to proceed with the auction sale was affirmed not only by law, but also by a final court judgment. Any subsequent court ruling that would enjoin the petitioners from exercising such right would have the effect of superseding a final and executory judgment.

Finally, we cannot help but observe that respondents may have saved themselves much trouble if they simply participated in the auction sale, as they are permitted to bid themselves on their pledged properties.^[20] Moreover, they would have had a better right had they matched the terms of the highest bidder.^[21] Under the circumstances, with the high interest payments that accrued after several years, respondents were even placed in a favorable position by the pledge agreements, since the creditor would be unable to recover any deficiency from the debtors should the sale price be insufficient to cover the principal amounts with interests. Certainly, had respondents participated in the auction, there would have been a chance for them to recover the shares at a price lower than the amount that was actually due from them to the Parays. That respondents failed to avail of this beneficial resort wholly accorded them by law is their loss. Now, all respondents can recover is the amounts they had consigned.

WHEREFORE, the petition is GRANTED. The assailed decision of the Court of Appeals is SET ASIDE and the decision of the Cebu City RTC, Branch 16, dated 18 November 1992 is REINSTATED. Costs against respondents.

SO ORDERED.

Quisumbing, (Chairman), Carpio and Carpio-Morales, JJ., concur

[1] Now known as Quinor Financing Corporation. See rollo, p. 5.

[2] Rollo, p. 18.

[3] Penned by then Judge (now Court of Appeals Associate Justice) R. Dacudao.

[4] Rollo, p. 36.

[5] The Court of Appeals had initially ruled that Miguela and Antonin Jariol had failed to consign payments. However, in a Resolution dated 4 May 2000, the appellate court recognized that the Jariol spouses had indeed made the consigned payments now referenced. See CA Rollo, pp. 279-280.

[6] Through a Decision dated 18 November 1992, penned by then Judge (now Court of Appeals Justice) G. Jacinto.

[7] CA rollo, pp. 144-147.

[8] Through a Decision dated 29 December 1997, penned by Associate Justice J. Rasul, and concurred in by Associate Justices E. Labitoria and M. Buzon.

[9] See Civil Code, Art. 2112.

[10] Rollo, p. 36.

[11] Art. 2112.

[12] See *Magno v. Viola*, 61 Phil. 80, 84 (1934-1935); citing *McQueeney vs. Toomey*, 36 Mont., 282; 122 Am. St. Rep., 358; 92 Pac., 561 12 Ann. Cas., 316; *Banking Corporation of Montana v. Hein*, 52 Mont., 238; 156 Pac., 1085. See also *Castro v. IAC*, G.R. No. 73859, 29 September 1988, 165 SCRA 654, 661.

[13] 50 Phil. 512 (1927).

[14] *Sibal 1.v. Valdez*, id., at 524.

[15] See Civil Code, Art. 2119.

[16] See Civil Code, Art. 2115.

[17] Rollo, p. 67.

[18] Id. at 36.

[19] See Rules of Court, Rule 39, Sec. 18.

[20] See Civil Code, Art. 2113.

[21] Ibid.

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