

SPOUSES FRANCISCO D. YAP AND WHELMA S. YAP, PETITIONERS, VS. SPOUSES ZOSIMO DY, SR. AND NATIVIDAD CHIU DY, SPOUSES MARCELINO MAXINO AND REMEDIOS L. MAXINO, PROVINCIAL SHERIFF OF...

G.R. No. 171868. July 27, 2011

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

May persons to whom several mortgaged lands were transferred without the knowledge and consent of the creditor redeem only several parcels if all the lands were sold together for a single price at the foreclosure sale? This is the principal issue presented to us for resolution in these two petitions for review on certiorari assailing the May 17, 2005 Decision[1] and March 15, 2006 Resolution[2] of the Court of Appeals (CA) in CA-G.R. C.V. No. 57205.

The antecedents are as follows:

The spouses Tomas Tirambulo and Salvacion Estorco (Tirambulos) are the registered owners of several parcels of land located in Ayungon, Negros Oriental, registered under Transfer Certificate of Title (TCT) Nos. T-14794, T-14777, T-14780, T-14781, T-14783 and T-20301 of the Registry of Deeds of Negros Oriental, and more particularly designated as follows:

(1) TCT No. T-14777

Lot 1 of Plan Pcs-11728

61,371 sq.m.

(2) TCT No. T-20301

Lot 3 of Plan Psu-124376

17,373 sq.m.

(3) TCT No. T-14780

Lot 4 of Plan Pcs-11728

27,875 sq.m.

(4) TCT No. T-14794

Lot 5 of Plan Psu-124376

2,900 sq.m.

(5) TCT No. T-14781

Lot 6 of Plan Pcs-11728

16,087 sq.m.

(6) TCT No. T-14783

Lot 8 of Plan Pcs-11728

39,888 sq.m

The Tirambulos likewise own a parcel of land denominated as Lot 846, covered by Tax Declaration No. 08109.

On December 3, 1976, the Tirambulos executed a Real Estate Mortgage[3] over Lots 1, 4, 5, 6 and 8 in favor of the Rural Bank of Dumaguete, Inc., predecessor of Dumaguete Rural Bank, Inc. (DRBI), to secure a P105,000 loan extended by the latter to them. Later, the Tirambulos obtained a second loan for P28,000 and also executed a Real Estate Mortgage[4] over Lots 3 and 846 in favor of the same bank on August 3, 1978.

Subsequently, on October 27, 1979, the Tirambulos sold all seven mortgaged lots to the spouses Zosimo Dy, Sr. and Natividad Chiu (the Dys) and the spouses Marcelino C. Maxino and Remedios Lasola (the Maxinos) without the consent and knowledge of DRBI. This sale, which was embodied in a Deed of Absolute Sale,[5] was followed by a default on the part of the Tirambulos to pay their loans to DRBI. Thus, DRBI extrajudicially foreclosed the December 3, 1976 mortgage and had Lots 1, 4, 5, 6 and 8 sold at public auction on March 31, 1982.

At the auction sale, DRBI was proclaimed the highest bidder and bought said lots for P216,040.93. The Sheriff's Certificate of Sale[6] stated that the "sale is subject to the rights of redemption of the mortgagor (s) or any other persons authorized by law so to do, within a period of one (1) year from registration hereof." [7] The certificate of sale, however, was not registered until almost a year later, or on June 24, 1983.

On July 6, 1983, or twelve (12) days after the sale was registered, DRBI sold Lots 1, 3 and 6 to the spouses Francisco D. Yap and Whelma D. Yap (the Yaps) under a Deed of Sale with Agreement to Mortgage.[8] It is important to note, however, that Lot 3 was not among the five properties foreclosed and bought by DRBI at public auction.

On August 8, 1983, or well within the redemption period, the Yaps filed a Motion for Writ of Possession[9] alleging that they have acquired all the rights and interests of DRBI over the foreclosed properties and are entitled to immediate possession of the same because the one-year redemption period has lapsed without any redemption being made. Said motion, however, was ordered withdrawn on August 22, 1983[10] upon motion of the Yaps, who gave no reason therefor.[11] Three days later, or on August 25, 1983, the Yaps again filed a Motion for Writ of Possession.[12] This time the motion was granted, and a Writ of Possession[13] over Lots 1, 3 and 6 was issued in favor of the Yaps on September 5, 1983. They were placed in possession of Lots 1, 3 and 6 seven days

later.

On May 22, 1984, roughly a month before the one-year redemption period was set to expire, the Dys and the Maxinos attempted to redeem Lots 1, 3 and 6. They tendered the amount of P40,000.00 to DRBI and the Yaps,[14] but both refused, contending that the redemption should be for the full amount of the winning bid of P216,040.93 plus interest for all the foreclosed properties.

Thus, on May 28, 1984, the Dys and the Maxinos went to the Office of the Sheriff of Negros Oriental and paid P50,625.29 (P40,000.00 for the principal plus P10,625.29 for interests and Sheriff's Commission) to effect the redemption.[15] Noticing that Lot 3 was not included in the foreclosure proceedings, Benjamin V. Diputado, Clerk of Court and Provincial Sheriff, issued a Certificate of Redemption[16] in favor of the Dys and the Maxinos only for Lots 1 and 6, and stated in said certificate that Lot 3 is not included in the foreclosure proceedings. By letter[17] of even date, Atty. Diputado also duly notified the Yaps of the redemption of Lots 1 and 6 by the Dys and the Maxinos, as well as the non-inclusion of Lot 3 among the foreclosed properties. He advised the Yaps to personally claim the redemption money or send a representative to do so.

In a letter to the Provincial Sheriff on May 31, 1984, the Yaps refused to take delivery of the redemption price arguing that one of the characteristics of a mortgage is its indivisibility and that one cannot redeem only some of the lots foreclosed because all the parcels were sold for a single price at the auction sale.[18]

On June 1, 1984, the Provincial Sheriff wrote the Dys and the Maxinos informing them of the Yaps' refusal to take delivery of the redemption money and that in view of said development, the tender of the redemption money was being considered as a consignment.[19]

On June 15, 1984, the Dys and the Maxinos filed Civil Case No. 8426 with the Regional Trial Court of Negros Oriental for accounting, injunction, declaration of nullity (with regard to Lot 3) of the Deed of Sale with Agreement to Mortgage, and damages against the Yaps and DRBI. In their complaint,[20] they prayed

- a) That the Deed of Sale With Agreement to Mortgage ... be declared null and void ab initio;
- b) That defendant Yap[s'] possession of Lot No. 3, TCT No. T20301 based as it was on a void sale, be declared illegal from the very beginning;
- c) That defendants be ordered to render to plaintiffs a fair accounting of the harvests and income which defendants made from said Lot No. 3 and, in addition, be ordered to pay to plaintiffs damages for wrongfully depriving plaintiffs of the use and enjoyment of said property;
- d) That the redemption which plaintiffs made of Lot No. 1, TCT No. 14777, and Lot No. 6, TCT No. 14781, through the Provincial Sheriff of Negros Oriental, be declared valid and binding on the defendants, thereby releasing and freeing said parcels of land from whatever liens or claims that said defendants might have on them;
- e) That defendants be likewise ordered to render to plaintiffs full and fair accounting of all the harvests, fruits, and income that they or either of them might have derived from said two parcels of land starting from the time defendant Yap first took possession thereof and harvested the coconuts in September, 1983;
- f) That, after the accounting herein prayed for, defendants be required to deliver to plaintiffs the net proceeds of the income from the three parcels of land subject of this case, together with interest at the legal rate;
- g) That for his acts of misrepresentation and deceit in obtaining a writ of possession over the three parcels of land subject of this case, and for the highly irregular and anomalous procedures and maneuvers employed by defendant Yap in securing said writ, as well as for harvesting the coconuts even after knowing that plaintiffs had already fully redeemed the properties in question and, with respect to Lot No. 3, after knowing that the

same was not in fact included in the foreclosure and, therefore, could not have been validly sold by the bank to him, said defendant Yap be condemned to pay plaintiffs moral damages in the amount of P200,000.00, plus punitive and exemplary damages in the amount of P100,000.00;

h) That for falsifying the Sheriff's Certificate of Sale and selling unlawfully Lot No. 3, TCT No. T-20301, to its co-defendant Yap, defendant DRBI be condemned to pay to plaintiffs actual damages in the amount of P50,000.00; moral damages in the amount of P200,000.00; and punitive and exemplary damages in the amount of P100,000.00;

i) That defendants be condemned to pay solidarily to plaintiffs attorney's fees in the amount of P50,000.00; other legitimate expenses of litigation in the amount of P30,000.00; and the costs of suit;

j) That pending hearing of this case, a writ of preliminary injunction be issued enjoining and restraining the defendants, particularly defendant Yap, from disturbing and interfering the plaintiffs' possession and other rights of ownership over the land in question;

k) That pending hearing of the petition for preliminary injunction, a temporary restraining order be issued against the defendants, particularly against defendant Yap, to serve the same purpose for which the writ of preliminary injunction is herein prayed for; and

l) That, after hearing of the main case, said preliminary injunction be made permanent.

Furthermore, plaintiffs pray for all other reliefs which may be just and equitable in the premises.[21]

Thereafter, on June 19, 1984, the Dys and the Maxinos consigned to the trial court an additional sum of P83,850.50 plus sheriff's commission fee of P419.25 representing the remaining balance of the purchase price that the Yaps still owed DRBI by virtue of the sale to them by the DRBI of Lots 1, 3 and 6.[22]

Meanwhile, by letter[23] dated June 27, 1984, the Yaps told DRBI that no redemption has been made by the Tirambulos or their successors-in-interest and requested DRBI to consolidate its title over the foreclosed properties by requesting the Provincial Sheriff to execute the final deed of sale in favor of the bank so that the latter can transfer the titles of the two foreclosed properties to them.

On the same date, the Yaps also wrote the Maxinos informing the latter that during the last harvest of the lots bought from DRBI, they excluded from the harvest Lot 3 to show their good faith. Also, they told the Maxinos that they were formally turning over the possession of Lot 3 to the Maxinos, without prejudice to the final determination of the legal implications concerning Lot 3. As to Lots 1 and 6, however, the Yaps stated that they intended to consolidate ownership over them since there has been no redemption as contemplated by law. Included in the letter was a liquidation of the copra proceeds harvested from September 7, 1983 to April 30, 1984 for Lots 1, 3 and 6.[24]

Later, on July 5, 1984, the Yaps filed Civil Case No. 8439 for consolidation of ownership, annulment of certificate of redemption, and damages against the Dys, the Maxinos, the Provincial Sheriff of Negros Oriental and DRBI. In their complaint,[25] the Yaps prayed

1. That [they] be declared the exclusive owners of Lot No. 1 covered by TCT No. T-14777 and Lot No. 6 covered by TCT No. T-14781 for failure on the part of defendants Zosimo Dy, Sr., and Marcelino Maxino to redeem the properties in question within one (1) year from the auction sale.

2. That defendants be [declared] solidarily liable to pay moral damages in the amount of ONE HUNDRED THOUSAND PESOS (P100,000.00), THIRTY[-]FIVE THOUSAND PESOS (P35,000.00) as attorney's fees and FIFTEEN THOUSAND PESOS (P15,000.00) as exemplary damages;

3. That the Provincial Sheriff be required to execute the final Deed of Sale in favor of the bank and the bank be

in turn required to transfer the property to the plaintiffs in accordance with the Deed of Sale with Mortgage.

4. That the court grant such other relief as may be deemed just and equitable under the premises.[26]

Civil Case Nos. 8426 and 8439 were tried jointly.

On October 24, 1985, the Yaps, by counsel, filed a motion to withdraw from the provincial sheriff the redemption money amounting to P50,373.42.[27] Said motion was granted on October 28, 1985 after a Special Power of Attorney executed by Francisco Yap in favor of his brother Valiente Yap authorizing the latter to receive the P50,373.42 redemption money was presented in court.[28]

On February 12, 1997, the trial court rendered decision[29] in favor of the Yaps. The fallo reads:

WHEREFORE, judgment is hereby rendered as follows:

1. Dismissing the complaint of Dy and Maxino spouses in Civil Case No. 8426 as well as the bank and the Yap spouses counterclaim for lack of factual and legal basis;

2. In Civil Case No. 8439:

a)

Declaring the Yap spouses, plaintiffs therein, the exclusive owners of Lot No. 1 covered by TCT No. T-14777 and Lot No. 6 covered by TCT No. T-14781 for failure on the part of the Dy and Maxino spouses, defendants therein, to redeem the properties in question within one (1) year from the auction sale.

b)

Directing the Provincial Sheriff of Negros Oriental to execute the Final Deed of Sale in favor of the bank and the latter to transfer the subject properties to the Yap spouses in accordance with the Deed of Sale With Mortgage....

SO ORDERED.[30]

On March 7, 1997, the trial court amended the above dispositive portion upon motion of DRBI, as follows:

Wherefore, judgment is hereby rendered as follows:

1. The Certificate of Redemption issued by the Provincial Sheriff (Exh. "M") is hereby declared null and void;

2. The Provincial Sheriff of Negros Oriental is hereby ordered to execute a Final Deed of Sale of the foreclosed properties in favor of the defendant Dumaguete Rural Bank, Inc., subject to the rights of the Yap spouses acquired in accordance with the Deed of Sale with Mortgage...;

3. The Deed of Sale dated [October] 27, 1979, made by Tirambulo and Estorco in favor of the Dys and Maxinos covering all the seven (7) parcels of land in question, is hereby declared null and void;

4. In Civil Case No. 8439, declaring the Yap Spouses, the exclusive owners of Lot No. 1, covered by TCT No. T-14777, and Lot No. 6, covered by TCT No. T-14781, for failure on the part of the Dy and Maxino Spouses, to redeem said properties within one (1) year from the date of the registration of the auction sale;

5. All other claims and counterclaims are hereby dismissed for lack of merit.

SO ORDERED.[31]

The trial court held that the Dys and the Maxinos failed to formally offer their evidence; hence, the court could not consider the same. It also upheld the Deed of Sale with Agreement to Mortgage between the Yaps and DRBI,

ruling that its genuineness and due execution has been admitted by the Dys and the Maxinos and that it is not contrary to law, morals, good customs, public policy or public order. Thus, ownership of Lots 1, 3 and 6 was transferred to the Yaps.

The trial court further held that the Dys and the Maxinos failed to exercise their rights of redemption properly and timely. They merely deposited the amount of P50,625.29 with the Sheriff, whereas the amount due on the mortgage deed is P216,040.93.

Aggrieved by the above ruling, the Dys and the Maxinos elevated the case to the CA. They argued that the trial court erred in:

1)

... failing to consider plaintiffs' evidence [testimonial, including the testimony of the Provincial Sheriff of Negros Oriental (Attorney Benjamin V. Diputado) and plaintiff Attorney Marcelino C. Maxino] and documentary [Exhibits A through TT (admitted under Order of 3 March 1995)];

2)

...failing to declare void or annul the purported contract of sale by Dumaguete Rural Bank, Inc. to Francisco D. Yap and Whelma S. Yap of Lots 1, 3, and 6, during the redemption period [the purported seller (bank) not being the owner thereof, and Lot 3 not being included in the foreclosure/auction sale and could not have been acquired by the Bank thereat];

3)

...not holding that the parcels of land had been properly and validly redeemed in good faith, defendant Yap, the Provincial Sheriff, the Clerk of Court, and Mr. Mario Dy, having accepted redemption/consignation (or, in not fixing the redemption price and allowing redemption);

4)

...not holding that by withdrawing the redemption money consigned/deposited by plaintiffs to the Court, and turning over possession of the parcels of land to plaintiffs, defendants Yap accepted, ratified, and confirmed redemption by plaintiffs of the parcels of land acquired at foreclosure/auction sale by the Bank and purportedly sold by it to and purchased by Yap;

5)

...not finding and holding that all the parcels of land covered by the foreclosed mortgage held by Dumaguete Rural Bank had been acquired by and are in the possession of plaintiffs as owners and that defendants bank and Yap had disposed of and/or lost their rights and interests and/or any cause of action and their claims had been extinguished and mooted or otherwise settled, waived and/or merged in plaintiffs-appellants;

6)

...not holding that defendants Yap have no cause of action to quiet title as they had no title or possession of the parcels of land in question and in declaring defendants Yap spouses the exclusive owners of Lot No. 1 covered by TCT No. T-14777 and Lot No. 6 covered by TCT No. T-14781 and in directing the Provincial Sheriff to execute the final deed of sale in favor of the bank and the latter to transfer the subject properties to the Yap spouses in accordance with the Deed of Sale with Mortgage which included Lot No. 3 which was not foreclosed by the Sheriff and was not included in the certificate of sale issued by him and despite their acceptance, ratification, and confirmation of the redemption as well as acknowledgment of possession of the parcels of land by plaintiffs;

7)

...issuing an amended decision after perfection of plaintiff's appeal and without waiting for their comment (declaring the Certificate of Redemption issued by the Provincial Sheriff (Exh. "M") null and void; ordering the Provincial Sheriff of Negros Oriental to execute a Final Deed of Sale of the foreclosed properties in favor of the defendant Dumaguete Rural Bank, Inc., subject to the rights of the Yap spouses acquired in accordance with the Deed of Sale with Mortgage (Exh. "B"-Maxino and Dy; Exh. "1" -Yap); declaring null and void the Deed of Sale dated Oct[ober] 27, 1979, made by Tirambulo and Estorco in favor of the Dys and Maxinos covering all the seven (7) parcels of land in question; in Civil Case No. 8439, declaring the Yap spouses, the exclusive owners of Lot No. 1, covered by TCT No. T-14777, and Lot No. 6, covered by TCT No. T-14781, for failure on the part of the Dy and Maxino spouses, to redeem said properties within (1) year from the date of registration of the auction sale) after plaintiffs had perfected appeal of the 12 February 1997 decision, without hearing or awaiting plaintiffs' comment, and in the face of the records showing that the issues were never raised, much less litigated, insofar as Tirambulo, as well in the face of the foregoing circumstances, especially dismissal of defendants' claims and counterclaims and acquisition of ownership and possession of the parcels of land by plaintiffs as well as disposition and/or loss of defendants rights and interests and cause of action in respect thereof and/or settlement, waiver, and/or extinguishment of their claims, and merger in plaintiffs-appellants, and without stating clearly the facts and the law upon which it is based[; and]

8)

...not finding, holding and ruling that defendants acted in bad faith and in an abusive and oppressive manner, if not contrary to law; and in not awarding plaintiffs damages.[32]

On May 17, 2005, the CA rendered a decision reversing the March 7, 1997 amended decision of the trial court. The dispositive portion of the assailed CA decision reads:

IN LIGHT OF THE FOREGOING, this appeal is GRANTED. The decision as well as the amended decision of the Regional Trial Court is REVERSED AND SET ASIDE. In lieu thereof[,] judgment is hereby rendered as follows:

1. Declaring the sale made by Dumaguete Rural Bank Inc. to Sps. Francisco and Whelma Yap with respect to Lot No. 3 under TCT No. T-20301 as null and void;
2. Declaring the redemption made by Spouses Dy and Spouses Maxino with regards to Lot No. 6 under TCT No. T-14781 and Lot No. 1 under TCT No. [T-]14777 as valid;
3. Ordering defendants, Sps. Yap, to deliver the possession and ownership thereof to Sps. Dy and Sps. Maxino; to give a fair accounting of the proceeds of these three parcels of land and to tender and deliver the corresponding amount of income from October 24, 1985 until the finality of this judgment[; and]
4. Condemning the defendant bank to pay damages to Spouses Dy and Spouses Maxino the amount of P20,000.00 as moral damages and P200,000.00 as exemplary damages and attorney's fees in the amount of P50,000.00.

All other claims are dismissed.

Costs against the appellees.

SO ORDERED.[33]

The CA held that the trial court erred in ruling that it could not consider the evidence for the Dys and the Maxinos allegedly because they failed to formally offer the same. The CA noted that although the testimonies of Attys. Marcelino C. Maxino and Benjamin V. Diputado were not formally offered, the procedural lapse was cured when

the opposing counsel cross-examined said witnesses. Also, while the original TSNs of the witnesses for the plaintiffs in Civil Case No. 8426 were burned, the latter's counsel who had copies thereof, furnished the Yaps copies for their scrutiny and comment. The CA further noted that the trial court also admitted all the documentary exhibits of the Dys and the Maxinos on March 3, 1995. Unfortunately, however, the trial court simply failed to locate the pertinent documents in the voluminous records of the cases.

On the merits, the CA ruled that the Dys and the Maxinos had proven their cause of action sufficiently. The CA noted that their claim that Lot 3 was not among the properties foreclosed was duly corroborated by Atty. Diputado, the Provincial Sheriff who conducted the foreclosure sale. The Yaps also failed to rebut their contention regarding the former's acceptance of the redemption money and their delivery of the possession of the three parcels of land to the Dys and the Maxinos. The CA also noted that not only did the Yaps deliver possession of Lot 3 to the Dys and the Maxinos, they also filed a Motion to Withdraw the Redemption Money from the Provincial Sheriff and withdrew the redemption money.

As to the question whether the redemption was valid or not, the CA found no need to discuss the issue. It found that the bank was in bad faith and therefore cannot insist on the protection of the law regarding the need for compliance with all the requirements for a valid redemption while estoppel and unjust enrichment operate against the Yaps who had already withdrawn the redemption money.

Upon motion for reconsideration of the Yaps, however, the CA amended its decision on March 15, 2006 as follows:

IN LIGHT OF THE FOREGOING, this appeal is GRANTED. The decision as well as the amended decision of the Regional Trial Court is REVERSED AND SET ASIDE. In lieu thereof[,] judgment is hereby rendered as follows:

1.Declaring the sale made by Dumaguete Rural Bank Inc. to Sps. Francisco and Whelma Yap with respect to Lot No. 3 under TCT No. T-20301 null and void;

2.Declaring the redemption made by Spouses Dy and Spouses Maxino with regards to Lot No. 6 under TCT No. T-14781 and Lot No. 1 under TCT No. [T-]14777 as valid;

3. Condemning the defendant bank to pay damages to Spouses Dy and Spouses Maxino the amount of P20,000.00 as moral damages and P200,000.00 as exemplary damages and attorney's fees in the amount of P50,000.00.

All other claims are dismissed.

Costs against the appellees.

SO ORDERED.[34]

Hence, the consolidated petitions assailing the appellate court's decision.

The Yaps argue in the main that there is no valid redemption of the properties extrajudicially foreclosed. They contend that the P40,000.00 cannot be considered a valid tender of redemption since the amount of the auction sale is P216,040.93. They also argue that a valid tender of payment for redemption can only be made to DRBI since at that time, their rights were subordinate to the final consolidation of ownership by the bank.

DRBI, aside from insisting that all seven mortgaged properties (which thus includes Lot 3) were validly foreclosed, argues, for its part, that the appellate court erred in sustaining the redemption made by the Dys and Maxinos. It anchors its argument on the fact that the sale of the Tirambulos to the Dys and Maxinos was without the bank's consent. The Dys and Maxinos therefore could not have assumed the character of debtors because a

novation of the contract of mortgage between the Tirambulos and DRBI did not take place as such a novation is proscribed by Article 1293 of the Civil Code. And there being no valid redemption within the contemplation of law and DRBI being the highest bidder during the auction sale, DRBI has become the absolute owner of the properties mortgaged when the redemption period expired.

DRBI further argues that it was unfair and unjust for them to be held liable for damages for supposedly wrongfully foreclosing on Lot 3, depriving the Dys and the Maxinos of the use of the land, and registering the Certificate of Sale which included Lot 3 when it should have excluded the same. DRBI argues that as a juridical person, it only authorized and consented, through its Board of Directors, to lawful processes. The unlawful acts of the Sheriff, who is considered as an agent of the bank in the foreclosure proceedings, cannot bind DRBI. Moreover, DRBI cannot be liable for damages on the basis of an affidavit that was submitted only before the CA as the bank had no chance to cross-examine the affiant and determine the veracity and propriety of the statements narrated in said affidavit.

Thus, the issues to be resolved in the instant case are essentially as follows: (1) Is Lot 3 among the foreclosed properties? (2) To whom should the payment of redemption money be made? (3) Did the Dys and Maxinos validly redeem Lots 1 and 6? and (4) Is DRBI liable for damages?

As to the first issue, we find that the CA correctly ruled that the Dys and Maxinos were able to prove their claim that Lot 3 was not among the properties foreclosed and that it was merely inserted by the bank in the Sheriff's Certificate of Sale. As Atty. Diputado, the Provincial Sheriff, testified, the application for foreclosure was only for five parcels of land, namely, Lots 1, 4, 5, 6 and 8. Accordingly, only said five parcels of land were included in the publication and sold at the foreclosure sale. When he was shown a copy of the Sheriff's Certificate of Sale consisting of three pages, he testified that it was altered because Lot 3 and Lot 846 were included beyond the "xxx" that marked the end of the enumeration of the lots foreclosed.[35] Also, a perusal of DRBI's application for foreclosure of real estate mortgage[36] shows that it explicitly refers to only one deed of mortgage to settle the Tirambulos' indebtedness amounting to P216,040.93. This is consistent with the Notice of Extrajudicial Sale of Mortgaged Property, published in the Dumaguete Star Informer on February 18, 25 and March 4, 1982,[37] announcing the sale of Lots 1, 4, 5, 6 and 8 for the satisfaction of the indebtedness amounting to P216,040.93. It is also consistent with the fact that Lots 1, 4, 5, 6 and 8 are covered by only one real estate mortgage, the Real Estate Mortgage[38] dated December 3, 1976. Indeed, that the foreclosure sale refers only to Lots 1, 4, 5, 6 and 8 is clear from the fact that Lots 1, 4, 5, 6 and 8 and Lot 3 are covered by two separate real estate mortgages. DRBI failed to refute these pieces of evidence against it.

As to the second issue regarding the question as to whom payment of the redemption money should be made, Section 31,[39] Rule 39 of the Rules of Court then applicable provides:

SEC. 31. Effect of redemption by judgment debtor, and a certificate to be delivered and recorded thereupon. To whom payments on redemption made.--If the judgment debtor redeem, he must make the same payments as are required to effect a redemption by a redemptioner, whereupon the effect of the sale is terminated and he is restored to his estate, and the person to whom the payment is made must execute and deliver to him a certificate of redemption acknowledged or approved before a notary public or other officer authorized to take acknowledgments of conveyances of real property. Such certificate must be filed and recorded in the office of the registrar of deeds of the province in which the property is situated, and the registrar of deeds must note the record thereof on the margin of the record of the certificate of sale. The payments mentioned in this and the last preceding sections may be made to the purchaser or redemptioner, or for him to the officer who made the sale. (Emphasis supplied.)

Here, the Dys and the Maxinos complied with the above-quoted provision. Well within the redemption period,

they initially attempted to pay the redemption money not only to the purchaser, DRBI, but also to the Yaps. Both DRBI and the Yaps however refused, insisting that the Dys and Maxinos should pay the whole purchase price at which all the foreclosed properties were sold during the foreclosure sale. Because of said refusal, the Dys and Maxinos correctly availed of the alternative remedy by going to the sheriff who made the sale. As held in *Natino v. Intermediate Appellate Court*,^[40] the tender of the redemption money may be made to the purchaser of the land or to the sheriff. If made to the sheriff, it is his duty to accept the tender and execute the certificate of redemption.

But were the Dys and Maxinos entitled to redeem Lots 1 and 6 in the first place? We rule in the affirmative.

The Dys and the Maxinos have legal personality to redeem the subject properties.

Contrary to petitioners' contention, the Dys and Maxinos have legal personality to redeem the subject properties despite the fact that the sale to the Dys and Maxinos was without DRBI's consent. In *Litonjua v. L & R Corporation*,^[41] this Court declared valid the sale by the mortgagor of mortgaged property to a third person notwithstanding the lack of written consent by the mortgagee, and likewise recognized the third person's right to redeem the foreclosed property, to wit:

Coming now to the issue of whether the redemption offered by PWHAS on account of the spouses Litonjua is valid, we rule in the affirmative. The sale by the spouses Litonjua of the mortgaged properties to PWHAS is valid. Therefore, PWHAS stepped into the shoes of the spouses Litonjua on account of such sale and was in effect, their successor-in-interest. As such, it had the right to redeem the property foreclosed by L & R Corporation. Again, *Tambunting*, *supra*, clarifies that -

"x x x. The acquisition by the Hernandezes of the Escuetas' rights over the property carried with it the assumption of the obligations burdening the property, as recorded in the Registry of Property, i.e., the mortgage debts in favor of the RFC (DBP) and the Tambuntings. The Hernandezes, by stepping into the Escuetas' shoes as assignees, had the obligation to pay the mortgage debts, otherwise, these debts would and could be enforced against the property subject of the assignment. Stated otherwise, the Hernandezes, by the assignment, obtained the right to remove the burdens on the property subject thereof by paying the obligations thereby secured; that is to say, they had the right of redemption as regards the first mortgage, to be exercised within the time and in the manner prescribed by law and the mortgage deed; and as regards the second mortgage, sought to be judicially foreclosed but yet unexpired, they had the so-called equity of redemption."

The right of PWHAS to redeem the subject properties finds support in Section 6 of Act 3135 itself which gives not only the mortgagor-debtor the right to redeem, but also his successors-in-interest. As vendee of the subject properties, PWHAS qualifies as such a successor-in-interest of the spouses Litonjua.^[42]

Likewise, we rule that the Dys and the Maxinos validly redeemed Lots 1 and 6.

The requisites of a valid redemption are present

The requisites for a valid redemption are: (1) the redemption must be made within twelve (12) months from the time of the registration of the sale in the Office of the Register of Deeds; (2) payment of the purchase price of the property involved, plus 1% interest per month thereon in addition, up to the time of redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after the purchase, also with 1% interest on such last named amount; and (3) written notice of the redemption must be served on the officer who made the sale and a duplicate filed with the Register of Deeds of the province.^[43]

There is no issue as to the first and third requisites. It is undisputed that the Dys and the Maxinos made the redemption within the 12-month period from the registration of the sale. The Dys and Maxinos effected the redemption on May 24, 1984, when they deposited P50,373.42 with the Provincial Sheriff, and on June 19, 1984, when they deposited an additional P83,850.50. Both dates were well within the one-year redemption period reckoned from the June 24, 1983 date of registration of the foreclosure sale. Likewise, the Provincial Sheriff who made the sale was properly notified of the redemption since the Dys and Maxinos deposited with him the redemption money after both DRBI and the Yaps refused to accept it.

The second requisite, the proper redemption price, is the main subject of contention of the opposing parties.

The Yaps argue that P40,000.00 cannot be a valid tender of redemption since the amount of the auction sale was P216,040.93. They further contend that the mortgage is indivisible so in order for the tender to be valid and effectual, it must be for the entire auction price plus legal interest.

We cannot subscribe to the Yaps' argument on the indivisibility of the mortgage. As held in the case of *Philippine National Bank v. De los Reyes*,^[44] the doctrine of indivisibility of mortgage does not apply once the mortgage is extinguished by a complete foreclosure thereof as in the instant case. The Court held:

The parties were accordingly embroiled in a hermeneutic disparity on their aforesaid contending positions. Yet, the rule on the indivisibility of mortgage finds no application to the case at bar. The particular provision of the Civil Code referred to provides:

Art. 2089. A pledge or mortgage is indivisible, even though the debt may be divided among the successors in interest of the debtor or of the creditor.

Therefore, the debtor's heir who has paid a part of the debt cannot ask for the proportionate extinguishment of the pledge or mortgage as long as the debt is not completely satisfied.

Neither can the creditor's heir who received his share of the debt return the pledge or cancel the mortgage, to the prejudice of the other heirs who have not been paid.

From these provisions is excepted the case in which, there being several things given in mortgage or pledge, each one of these guarantees only a determinate portion of the credit.

The debtor, in this case, shall have a right to the extinguishment of the pledge or mortgage as the portion of the debt for which each thing is specially answerable is satisfied.

From the foregoing, it is apparent that what the law proscribes is the foreclosure of only a portion of the property or a number of the several properties mortgaged corresponding to the unpaid portion of the debt where before foreclosure proceedings partial payment was made by the debtor on his total outstanding loan or obligation. This also means that the debtor cannot ask for the release of any portion of the mortgaged property or of one or some of the several lots mortgaged unless and until the loan thus, secured has been fully paid, notwithstanding the fact that there has been a partial fulfillment of the obligation. Hence, it is provided that the debtor who has paid a part of the debt cannot ask for the proportionate extinguishment of the mortgage as long as the debt is not completely satisfied.

That the situation obtaining in the case at bar is not within the purview of the aforesaid rule on indivisibility is obvious since the aggregate number of the lots which comprise the collaterals for the mortgage had already been foreclosed and sold at public auction. There is no partial payment nor partial extinguishment of the obligation to speak of. The aforesaid doctrine, which is actually intended for the protection of the mortgagee, specifically refers to the release of the mortgage which secures the satisfaction of the indebtedness and naturally presupposes that the mortgage is existing. Once the mortgage is extinguished by a complete foreclosure thereof, said doctrine of

indivisibility ceases to apply since, with the full payment of the debt, there is nothing more to secure.[45] (Emphasis supplied.)

Nothing in the law prohibits the piecemeal redemption of properties sold at one foreclosure proceeding. In fact, in several early cases decided by this Court, the right of the mortgagor or redemptioner to redeem one or some of the foreclosed properties was recognized.

In the 1962 case of *Castillo v. Nagtalon*,[46] ten parcels of land were sold at public auction. Nagtalon, who owned three of the ten parcels of land sold, wanted to redeem her properties. Though the amount she tendered was found as insufficient to effectively release her properties, the Court held that the tender of payment was made timely and in good faith and thus, in the interest of justice, Nagtalon was given the opportunity to complete the redemption purchase of three of the ten parcels of land foreclosed.

Also, in the later case of *Dulay v. Carriaga*,[47] wherein Dulay redeemed eight of the seventeen parcels of land sold at public auction, the trial court declared the piecemeal redemption of Dulay as void. Said order, however, was annulled and set aside by the Court on certiorari and the Court upheld the redemption of the eight parcels of land sold at public auction.

Clearly, the Dys and Maxinos can effect the redemption of even only two of the five properties foreclosed. And since they can effect a partial redemption, they are not required to pay the P216,040.93 considering that it is the purchase price for all the five properties foreclosed.

So what amount should the Dys and Maxinos pay in order for their redemption of the two properties be deemed valid considering that when the five properties were auctioned, they were not separately valued?

Contrary to the Yaps' contention, the amount paid by the Dys and Maxinos within the redemption period for the redemption of just two parcels of land was not only P40,000.00 but totaled to P134,223.92 (P50,373.42 paid on May 28, 1984 plus P83,850.50 paid on June 19, 1984). That is more than 60% of the purchase price for the five foreclosed properties, to think the Dys and Maxinos were only redeeming two properties. We find that it can be considered a sufficient amount if we were to base the proper purchase price on the proportion of the size of Lots 1 and 6 with the total size of the five foreclosed properties, which had the following respective sizes:

Lot 1

61,371 square meters

Lot 6

16,087 square meters

Lot 5

2,900 square meters

Lot 4

27,875 square meters

Lot 8

39,888 square meters

TOTAL

148,121 square meters

The two subject properties to be redeemed, Lots 1 and 6, have a total area of 77,458 square meters or roughly 52% of the total area of the foreclosed properties. Even with this rough approximation, we rule that there is no reason to invalidate the redemption of the Dys and Maxinos since they tendered 60% of the total purchase price for properties constituting only 52% of the total area. However, there is a need to remand the case for computation of the pro-rata value of Lots 1 and 6 based on their true values at that time of redemption for the purposes of determining if there is any deficiency or overpayment on the part of the Dys and Maxinos.

As to the award of damages in favor of the Dys and Maxinos, we agree with the appellate court for granting the same.

The CA correctly observed that the act of DRBI in falsifying the Sheriff's Certificate of Sale to include Lots 3 and 846, even if said additional lots were not among the properties foreclosed, was the proximate cause of the pecuniary loss suffered by the Dys and Maxinos in the form of lost income from Lot 3.

Likewise, the CA also correctly awarded moral damages. Paragraph 10, Article 2219 of the Civil Code provides that moral damages may be recovered in case of acts and actions referred to in Article 21 of the same Code. Article 21 reads:

ART. 21 Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

As previously discussed, DRBI's act of maliciously including two additional properties in the Sheriff's Certificate of Sale even if they were not included in the foreclosed properties caused the Dys and Maxinos pecuniary loss. Hence, DRBI is liable to pay moral damages.

The award of exemplary damages is similarly proper. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.[48] We cannot agree more with the following ratio of the appellate court in granting the same:

Additionally, what is alarming to the sensibilities of the Court is the deception employed by the bank in adding other properties in the certificate of sale under public auction without them being included in the public auction conducted. It cannot be overemphasized that being a lending institution, prudence dictates that it should employ good faith and due diligence with the properties entrusted to it. It was the bank which submitted the properties ought to be foreclosed to the sheriff. It only submitted five (5) properties for foreclosure. Yet, it caused the registration of the Certificate of Sale under public auction which listed more properties than what was foreclosed. On this aspect, exemplary damages in the amount of P200,000.00 are in order.[49]

There being an award of exemplary damages, the award of attorney's fees is likewise proper as provided in paragraph 1, Article 2208 of the Civil Code.

WHEREFORE, the petitions for review on certiorari are DENIED for lack of merit. The Decision dated May 17, 2005 and Resolution dated March 15, 2006 of the Court of Appeals in CA-G.R. C.V. No. 57205 are hereby

AFFIRMED with the MODIFICATION that the case is REMANDED to the Regional Trial Court of Negros Oriental, Branch 44, Dumaguete City, for the computation of the pro-rata value of properties covered by TCT No. T-14777 (Lot 1) and TCT No. T-14781 (Lot 6) of the Registry of Deeds of Negros Oriental at the time of redemption to determine if there is a deficiency to be settled by or overpayment to be refunded to respondent Spouses Zosimo Dy, Sr. and Natividad Chiu and Spouses Marcelino C. Maxino and Remedios Lasola with regard to the redemption money they paid.

With costs against the petitioners.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Del Castillo, JJ., concur.

[1] Rollo (G.R. No. 171991), pp. 27-41. Penned by Associate Justice Pampio A. Abarintos with Associate Justices Mercedes Gozo-Dadole and Sesonando E. Villon concurring.

[2] Id. at 53-61. Penned by Associate Justice Pampio A. Abarintos with Associate Justices Enrico A. Lanzanas and Apolinario D. Bruselas, Jr. concurring.

[3] Records (Civil Case No. 8439), Vol. 1, p. 9.

[4] Id. at 10.

[5] Id. at 14-17.

[6] Id. at 18-20.

[7] Id. at 20.

[8] Records (Civil Case No. 8426), Vol. I, pp. 23-25.

[9] Id. at 26-28.

[10] Id. at 30.

[11] Id. at 29.

[12] Id. at 31-33.

[13] Id. at 34-35.

[14] Id. at 36-37.

[15] Id. at 38-39.

[16] Id. at 43-45.

[17] Id. at 46.

[18] Id. at 47-48.

[19] Id. at 50.

[20] Id. at 1-17.

[21] Id. at 15-16.

[22] Id. at 56-58.

[23] Records (Civil Case No. 8439), p. 32.

[24] Id. at 33-34.

[25] Id. at 2-8.

[26] Id. at 7-8.

[27] Records (Civil Case No. 8426), Vol. I, pp. 346-347.

[28] Id. at 348.

[29] Rollo (G.R. No. 171991), pp. 93-109.

[30] Id. at 108-109.

[31] Id. at 110-111.

[32] CA rollo, pp. 45-48.

[33] Rollo (G.R. No. 171991), pp. 40-41.

[34] Id. at 61.

[35] TSN, August 30, 1985, pp. 4-6.

[36] Records (Civil Case No. 8426), Vol. I, p. 245.

[37] Id. at 246-248.

[38] Records (Civil Case No. 8439), Vol. I, p. 9.

[39] Now Section 29, Rule 39 of the 1997 Rules of Civil Procedure, as amended. Section 29 provides as follows:

SEC. 29. Effect of redemption by judgment obligor, and a certificate to be delivered and recorded thereupon; to whom payments on redemption made.--If the judgment obligor redeems, he must make the same payments as are required to effect a redemption by a redemptioner, whereupon, no further redemption shall, be allowed and he is restored to his estate. The person to whom the redemption payment is made must execute and deliver to him a certificate of redemption acknowledged before a notary public or other officer authorized to take acknowledgments of conveyances of real property. Such certificate must be filed and recorded in the registry of deeds of the place in which the property is situated, and the registrar of deeds must note the record thereof on the margin of the record of the certificate of sale. The payments mentioned in this and the last preceding sections may be made to the purchaser or redemptioner, or for him to the officer who made the sale.

[40] G.R. No. 73573, May 23, 1991, 197 SCRA 323, 332.

[41] G.R. No. 130722, December 9, 1999, 320 SCRA 405.

[42] Id. at 418-419.

[43] Rosales v. Yboa, No. L-42282, February 28, 1983, 120 SCRA 869, 874.

[44] G.R. Nos. 46898-99, November 28, 1989, 179 SCRA 619.

[45] Id. at 625-627.

[46] No. L-17079, January 29, 1962, 4 SCRA 48, 54.

[47] No. L-52831, July 29, 1983, 123 SCRA 794.

[48] Article 2229, Civil Code of the Philippines.

[49] Rollo (G.R. No. 171991), pp. 39-40.

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