

HEIRS OF NORBERTO J. QUISUMBING, PETITIONERS, VS. PHILIPPINE NATIONAL BANK AND SANTIAGO LAND DEVELOPMENT CORPORATION, RESPONDENTS.

G.R. No. 178242. January 20, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

From the Court of Appeals Decision[1] of February 14, 2007 denying petitioners' appeal from the Decision[2] of the Regional Trial Court, Branch 62, Makati City in Civil Case No. 10513, they come to this Court on petition for review on certiorari.

Culled from the eight-volume records of the case are the following facts:

In 1984, spouses Ricardo C. Silverio and Beatriz Sison-Silverio (spouses Silverio) and Ricardo C. Silverio as Chairman of the Board of the following companies, namely Delta Motors Corporation (Delta Motors), Komatsu Industries (Komatsu), R.C. Silverio Management Corporation (RCSMC), through Deeds of Assignment[3] dated April 11 and 12, 1985, assigned to Atty. Norberto J. Quisumbing (Quisumbing) their rights of redemption with respect to various real properties which herein respondent Philippine National Bank (PNB) had foreclosed and acquired as the highest bidder. The properties included lots in Quezon City, Manila, Pampanga and Bulacan in the name of Ricardo C. Silverio, married to Beatriz Sison; a lot in Tagaytay in the name of Ricardo C. Silverio; lots in Nueva Ecija in the name of RCSMC; lots in Baguio and Benguet in the name of Delta Motors; a lot in Zambales in the name of RCSMC; and a lot in Rizal (actually Pasong Tamo, Makati) including improvements in the name of Komatsu (hereafter referred to as Pasong Tamo property).

By letter[4] dated April 8, 1985, Quisumbing made a formal tender of redemption to PNB for the abovementioned properties, with the request that he be informed within 10 days of the total amount of the redemption prices so "he would know how much to pay." Quisumbing furnished the sheriffs who conducted the sales, as well as the registers of deeds in the various localities where the properties are situated, with a copy of said tender letter.

Acting on Quisumbing's tender of redemption, the PNB, by letter of April 15, 1985, requested copies of the Deeds of Assignment so that it may "have a basis to reply to" his request.[5] Quisumbing furnished PNB with copies of the Deeds, requesting a reply to his tender letter and requested for the computation of the total amount of redemption price for which he gave PNB until April 30, 1985 to do so. Before PNB could reply, however, or on April 23, 1985, Quisumbing executed an Affidavit of Redemption,[6] furnishing PNB, the sheriffs and the registers of deeds a copy thereof.

Before the one-year redemption period expired, PNB, by letter dated May 3, 1985,[7] denied Quisumbing's offer of redemption on the ground that the Deeds of Assignment were invalid for not having been registered and for being against Art. 1491 (5) of the Civil Code; that the tender was not proper because it was not accompanied by actual money payment; and that the amount Quisumbing offered was way below that required under Sec. 25 of P.D. No. 694.

Quisumbing thus filed a Complaint[8] before the Regional Trial Court (RTC) of Makati[9] against PNB to compel it to allow him to exercise his right of redemption over the foreclosed properties and to inform him of the total amount of redemption price. At the same time, he caused the annotation of a notice of lis pendens on the certificates of title of the properties.

In its Answer,[10] PNB contended that Quisumbing had no cause of action as his tender offer was "pro-forma," as the same was unaccompanied by cash payment; that the offer was not in accordance with Section 25 of P.D. No. 694, as amended; that the assignment of rights made in Quisumbing's favor was ineffectual because the same was not registered and annotated on the certificates of title of the properties; that the Deeds of Assignment executed by RSCMC, Komatsu and Delta Motors were defectively acknowledged as public instruments; and that the assignments were barred by Article 1491 (5) of the Civil Code.[11] During the pendency of the case, Quisumbing died, hence, he was substituted by his heirs-herein petitioners on September 14, 1990.

On December 8, 1989, with the approval by Branch 149 of the Makati RTC, the herein other respondent Santiago Land Development Corporation (SLDC) intervened, it having purchased pendente lite from PNB the Pasong Tamo property, and adopted in its Answer-in-Intervention PNB's defenses as set forth in its Answer, and raised additional defenses.

Petitioners thus filed before the appellate court a Petition for Certiorari, docketed as CA-G.R. SP No. 25826, questioning, inter alia, the trial court's grant of SLDC's move to intervene, arguing that SLDC should have joined as an additional defendant for it to be bound by all prior proceedings.

By Decision dated July 6, 1992, the appellate court granted the petition of petitioners and nullified the trial court's Order granting SLDC's intervention. SLDC appealed to this Court via certiorari, docketed as G.R. No. 106194.

By Decision[12] of January 28, 1997, the Court dismissed SLDC's petition and affirmed the appellate court's decision, ruling that SLDC is a transferee pendente lite and, as such, could no longer intervene as the law already considers it joined or substituted in the pending action, hence, bound by all prior proceedings and barred from presenting a new or different claim.

SLDC thereupon filed a Motion for Partial Substitution in Civil Case No. 10513, which was granted on April 14, 1998.

By Decision[13] of October 24, 2000, the trial court dismissed petitioner's Amended Complaint as against PNB, as well as that against SLDC, ruling that Quisumbing did not make a valid tender of redemption as it was not accompanied by cash payment; that Sec. 25 of P.D. No. 694 is not unconstitutional and was applicable not only to direct debtors/mortgagors but constructively also to accommodation mortgagors following *Nepomuceno v. RFC*. [14] Aggrieved, petitioners appealed to the Court of Appeals.

By the assailed Decision of February 14, 2007, the appellate court affirmed the trial court's decision, holding that there was no valid offer to redeem the properties owing to Quisumbing's failure to validly tender payment; and that even if his filing of the complaint was considered as judicial redemption, it was still ineffectual due to non-tender of the redemption price. On account of such ruling, the appellate court no longer ruled on the issue of the constitutionality of Sec. 25 of P.D. 694 and on the validity of the Deeds of Assignment. Petitioners' motion for reconsideration having been denied by Resolution dated June 5, 2007, this present petition was filed.

Petitioners insist that Quisumbing made a valid tender of redemption because he did not have to tender the redemption prices due to, so they claim, PNB's outright refusal to accept or allow any redemption, and that he perfected a 'judicial redemption' following *Tioseco v. CA*. [15] They assail the ruling of the trial court that spouses Silverio were accommodation mortgagors or direct debtors/mortgagors and that Sec. 25 of P.D. No. 694 applies to

accommodation mortgagors, as well as the trial and appellate court's ruling that Sec. 25 is not unconstitutional despite its being violative, so petitioners contend, of the due process and equal protection clauses of the Constitution.

Petitioners maintain that Sec. 25 applies only to debtors-mortgagors, hence, the case at bar should have been governed by the general law on redemption â€” Sec. 6 of Republic Act No. 3135 vis a vis Rule 39, Sec. 30. In support of their position, they draw attention to the fact that all the certificates of sale state that the proceedings/sale were pursuant to an "extra-judicial foreclosure of real estate mortgage under RA 3135 as amended," without any mention whatsoever of P.D. No. 694. Petitioners thus conclude that Sec. 25 of P.D. No. 694 should be struck down for being void for vagueness; and that it is arbitrary and unreasonable because it grants a preferred position to PNB which may abuse to unjustly enrich itself at the expense of mortgagors, hence, violative of the right to due process.

At all events, they argue that assuming that Sec. 25 applies to accommodation mortgagors such as the spouses Silverio still, the redemption price would be based on the value of the properties foreclosed, not on the obligations of the debtor, as what PNB insists on doing.

In its Comment,[16] PNB, averring that what petitioners are raising are questions of fact, maintains that the Deeds of Assignment are void for being against public policy because at the time they were executed, Quisumbing was already the lawyer not only of the spouses Silverio but also of Komatsu and the other companies, the properties of which were being foreclosed.

In its separate Comment,[17] SLDC argues that the present petition, insofar as the Pasong Tamo property is concerned, is barred by res judicata, the Court in Komatsu Industries (Phils.) Inc. v. Philippine National Bank and Santiago Land Development Corporation and Maximo Contreras, (Komatsu case)[18] having declared PNB's extrajudicial foreclosure of the said property and eventual sale to SLDC valid. It adds that, since in G.R. No. 106194 or the "Intervention Case," it was held that a purchaser pendente lite â€” SLDC is bound by the outcome of the case instituted by the transferor â€” PNB, then Quisumbing, as transferee pendente lite of Komatsu's right to redeem the Pasong Tamo property, "must also necessarily be bound by the outcome of the Komatsu case" â€” and that, perforce, "if he cannot intervene, then neither can he be allowed to file or maintain a separate case."

Maintaining that Quisumbing's "judicial redemption" should not be allowed, SLDC contends that since redemption is inconsistent with the claim of invalidity of a foreclosure sale, then Komatsu's act of assigning its right of redemption to Quisumbing was incompatible with its earlier remedy of contesting the validity of PNB's foreclosure and is, therefore, prohibited.

SLDC further avers that Sec. 25 of PD No. 694 does not violate the due process clause, its provision requiring the mortgagors to pay the redemption price being in line with the purpose of the law, viz "to protect the investment of the government in the institution."

Aside from reiterating their previous arguments, petitioners, in their Consolidated Reply,[19] refute SLDC's and PNB's arguments. They contend that the action is not barred by res judicata because in the Komatsu case, the Court "contemplated" that the issue of validity of the exercise of redemption would not be resolved in that case but in Civil Case No. 10513, and the reason why Quisumbing was not required to intervene in Komatsu was because he was not a party thereto, and the case involved annulment of the foreclosure sale, not the exercise of the right of redemption.

Petitioners further maintain that the issue of whether the assignment of rights made in Quisumbing's favor was barred for being against public policy (under Art. 1491[5] of the Civil Code) can no longer be raised as an issue,

respondents having failed to raise it in the proceedings below; and assuming arguendo that it had been raised, said provision would not apply, as what were assigned were merely the rights of redemption, not the properties themselves, and Quisumbing did not represent Komatsu or the other companies in the annulment of foreclosure proceedings.

In a Supplemental Petition[20] filed on August 28, 2007, petitioners submit that the sale of the Philippine Government's remaining minority shares (12.28%) in the PNB on August 1, 2007 reinforces their argument that if Sec. 25 of P.D. No. 694 is made applicable to accommodation mortgagors, the same should be struck down for being unconstitutional, as it would then be violative of the equal protection clause. And they assert that if, indeed, the purpose of said provision is to protect the government's investment in PNB, then it has ceased to exist due to the privatization of said institution and, as such, Sec. 25 should be struck down.

The pivotal issue that needs to be resolved is whether the original plaintiff, Atty. Norberto J. Quisumbing, made a valid tender of redemption.

The Court rules in the negative.

Sec. 25 of P.D. No. 694 otherwise known as the Revised Charter of the Philippine National Bank enacted on May 8, 1975 provides:

Section 25. Right of redemption of foreclosed property Right of possession during redemption period. Within one year from the registration of the foreclosure sale of real estate, the mortgagor shall have the right to redeem the property by paying all claims of the Bank against him on the date of the sale including all the costs and other expenses incurred by reason of the foreclosure sale and custody of the property, as well as charges and accrued interests.

The Bank may take possession of the foreclosed property during the redemption period. When the Bank takes possession during such period, it shall be entitled to the fruits of the property with no obligation to account for them, the same being considered compensation for the interest that would otherwise accrue on the account. Neither shall the Bank be obliged to post a bond for the purpose of such possession. (Emphasis supplied)

On the other hand, under Act No. 3135, An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgages (which took effect on March 6, 1924), as amended by Act. No. 4118, redemption of extra-judicially foreclosed properties is undertaken as follows:

SECTION 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore 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. (Emphasis supplied)

And the pertinent provision of the Code of Civil Procedure, now Section 28 of Rule 39 of the Revised Rules of Civil Procedure, reads:

SEC. 28. Time and manner of, and amounts payable on, successive redemptions; notice to be given and filed. - The judgment obligor, or redemptioner, may redeem the property from the purchaser, at any time within one (1) year from the date of the registration of the certificate of sale, by paying the purchaser the amount of his purchase, with one per centum per month interest 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 purchase, and interest on such last named amount of the same rate; and if the purchaser be also a creditor having a prior lien

to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such other lien, with interest. (Emphasis supplied)

As to the requisites for a valid tender of redemption in case of extra-judicially foreclosed properties by banks, *Banco Filipino Savings and Mortgage Bank, Inc., v. Court of Appeals*,^[21] instructs:

Section 6 of Act 3135 provides for the requisites for a valid redemption, thus:

SEC. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore 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 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, insofar as these are not inconsistent with the provisions of this Act.

However, considering that petitioner is a banking institution, the determination of the redemption price is governed by Section 78 of the General Banking Act which provides:

In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real estate which is security for any loan granted before the passage of this Act or under the provisions of this Act, the mortgagor or debtor whose real property has been sold at public auction, judicially or extrajudicially, for the full or partial payment of an obligation to any bank, banking or credit institution, within the purview of this Act shall have the right, within one year after the sale of the real estate as a result of the foreclosure of the respective mortgage, to redeem the property by paying 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.

Clearly, the right of redemption should be exercised within the specified time limit, which is one year from the date of registration of the certificate of sale. The redemptioner should make an actual tender in good faith of the full amount of the purchase price as provided above, 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.

x x x x

In *BPI Family Savings Bank, Inc. vs. Veloso*, we held:

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.

x x x x

Whether or not respondents were diligent in asserting their willingness to pay is irrelevant. Redemption within the period allowed by law is not a matter of intent but a question of payment or valid tender of the full redemption price within said period. (Emphasis supplied)

Evidently, whether the redemption is being made under Act No. 3135 or the General Banking Act, as amended by Presidential Decree No. 1828, or under P.D. No. 694, the mortgagor or his assignee is required to tender payment

to make said redemption valid - something which petitioners' predecessor failed to do. The only instance when this rule may be construed liberally, i.e., allow the non-simultaneous tender of payment, is if a judicial action is instituted by the redemptioner. [22]

Petitioner however claims, citing *Banco Filipino Savings and Mortgage Bank v. Court of Appeals and Lee Chuy Realty Corporation v. Court of Appeals* that in case of disagreement over the redemption price, the redemptioner may preserve his right of redemption through judicial action which must be filed within the one-year period of redemption. The filing of a court action to enforce redemption, being equivalent to a formal offer to redeem, would have the effect of preserving his redemptive rights and "freezing" the expiration of the one-year period. 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 the right to redeem is exercised through judicial action within the reglementary period, the offer to redeem, accompanied by a bona fide tender of the redemption price, while proper, may be unessential. (Emphasis supplied)

For this exception to apply, however, certain conditions must be met, viz:

It should, however, be noted that in *Hi-Yield Realty, Inc. v. Court of Appeals*, we held that the action for judicial redemption should be filed on time and in good faith, the redemption price is finally determined and paid within a reasonable time, and the rights of the parties are respected. Stated otherwise, the foregoing interpretation has three critical dimensions: (1) timely redemption or redemption by expiration date; (2) good faith as always, meaning, the filing of the action must have been for the sole purpose of determining the redemption price and not to stretch the redemptive period indefinitely; and (3) once the redemption price is determined within a reasonable time, the redemptioner must make prompt payment in full. (Emphasis supplied)

While Quisumbing filed the Complaint on May 7, 1985, days or even weeks before the expiration of the one-year redemption period reckoned from the dates of registration of the different certificates of sale, it cannot be said that he was motivated by good faith when he filed the Complaint, as contemplated in the above ruling. For the Complaint was filed not for the sole purpose of determining the redemption price, but, as Quisumbing himself admitted on direct examination, it was to seek the annulment of Sec. 25 of P.D. No. 694, thus:

Q:

And what is the purpose of your present suit?

A:

To compel the redemption, because the redemption were (sic) disallowed unless the entire obligation rather than just leaving the purchase price of the foreclosure sale is paid. The purpose of suit therefore, is to seek the annulment of that provision of Section 25 of the Revised Chapter (sic) of the Philippine National Bank, which provides that redemption can be effected only by paying the entire claim of the Philippine National Bank, against in this case, Delta Motors Corporation. As the Complaint alleges the sale . . . contrary to law, moral, customs, public security, since the law favors in the long line of decisions of the right of redemption. Second, with such a provision no one can get a fair price at a foreclosure sale of an individual property.[23] (Emphasis and underscoring supplied)

And on cross-examination, when questioned why he wrote to PNB on April 8, 1985 offering to redeem the property when the Deeds of Assignment in his favor were not yet executed, Quisumbing replied:

x x x x

Q:

The Deeds of Assignment were executed either on April 12 or 11 in the case of Komatsu, 1985. Why did you write PNB a tender of letter as early as April 8 when the Deeds of Assignment were not yet executed - have not yet been executed?

A:

Well, there might have been a delay in the execution of the Deeds of Assignment; but since I was certain that PNB will reject a redemption, not in accordance with Sec. 25 of its charter. In other words, just offering the purchase price derive from... we began the process of redemption early. Besides, the Philippine National Bank, in some cases, in other creditors of . . . [24]

x x x x (Emphasis and underscoring supplied)

Clearly, from the admissions reflected in the testimony, Quisumbing's filing of the Complaint was not solely due to a mere disagreement in the redemption price; rather, it was because he was not willing to pay whatever amount PNB would compute on the basis of Sec. 25 of P.D. No. 694. By questioning the constitutionality of said provision, Quisumbing, wittingly delayed the redemption, since he must have known that raising the issue of constitutionality of a statute in any suit would result in a litigious process which could stretch for an indefinite period as, in fact, the history of the present case shows. More importantly, his act of executing his Affidavit of Redemption on April 23, 1985 and alleging therein his oft-repeated excuse of "PNB's refusal to allow him to redeem the subject properties" even before PNB could provide him the computations by April 30, 1985, as he himself requested in his April 23, 1985 letter, and before PNB's actual refusal as stated in its May 3, 1985 letter, reflected that from the very beginning, his mindset was that if any redemption would be had, the same should be made according to his terms and conditions and under Act No. 3135, not P.D. No. 694. Indubitably, such actuations belie good faith and, therefore, the exception as enunciated in Tolentino case would not apply.

Had Quisumbing believed in good faith that Act No. 3135 was applicable, he could have tendered the amount as computed thereunder, if only to show that he was able and willing to redeem the properties.

Respecting the issues raised by petitioners that Sec. 25 of P.D. No. 694 is unconstitutional, the same has been rendered moot and academic by the full privatization of PNB pursuant to E.O. 80[25] which repealed said P.D., as well as the subsequent sale of the remaining shares of the government on August, 2007 which converted it from a government financial institution to a private banking institution.

The foregoing discussions render it unnecessary to address the other points pleaded by petitioners, such as the validity of the Deeds of Assignment, whether the Silverio spouses are accommodation mortgagors or direct debtors/mortgagors, or whether the suit is barred by the principle of res judicata.

WHEREFORE, the petition is DENIED. The February 14, 2007 Decision of the Court of Appeals and the June 5, 2007 Resolution in CA-G.R. CV No. 69337 are AFFIRMED.

Costs against petitioner.

SO ORDERED.

Carpio Morales,[*] (Acting Chairperson), Tinga, Chico-Nazario,**] and Brion, JJ., concur.

[*] Acting Chairperson in lieu of Justice Leonardo A. Quisumbing who took no part.

[**] Additional member per Raffle dated September 3, 2007 and pursuant to Administrative Circular No. 42-2007 in A.M. No. 07-6-13-SC.

- [1] "Heirs of Norberto Quisumbing v. Philippine National Bank and Santiago Land Development Corporation," Annex "A" of Petition, rollo, pp. 130-145. Penned by Associate Justice Jose C. Reyes, Jr., and concurred in by Associate Justices Jose L. Sabio, Jr., and Myrna Dimaranan Vidal.
- [2] Annex "EE," id at. 747-757. Penned by Judge Roberto C. Diokno.
- [3] Exhibit "BB," id at 316-324.
- [4] Annex "N," id at 188-192.
- [5] Vide letter, Annex "O," id at 357 and 359.
- [6] Annex "Q," id at 193-196.
- [7] Vide letter, records, Vol. I, pp. 142-143.
- [8] Annex "C," id at 147-155.
- [9] N.B.: initially filed with Branch 149 but assailed Decision rendered by Branch 62.
- [10] Annex "D," id. at 209-213.
- [11] Art. 1491(5) justices, judges, prosecuting attorneys, clerks of superior and inferior courts, and other officers and employees connected with the administration of justice, the property and rights in litigation or levied upon an execution before the court within whose jurisdiction or territory they exercise their respective functions; this prohibition includes the act of acquiring by assignment and shall apply to lawyers, with respect to the property and rights which may be the object of any litigation in which they may take part by virtue of their profession;
- [12] Santiago Land Development Corporation v. Court of Appeals, G.R. No. 106194, January 28, 1997, 267 SCRA 79.
- [13] Vide note 2.
- [14] 110 Phil 42 (1960).
- [15] G.R. No. L-66597, August 29, 1986, 143 SCRA 705.
- [16] Rollo, pp. 1663-1715.
- [17] Id. at 1485-1589.
- [18] G.R. No. 127682, April 24, 1998, 289 SCRA 604.
- [19] Rollo, pp. 1728-1809.
- [20] Id. at 1469-1479.
- [21] G.R. No. 143896, July 8, 2005, 463 SCRA 64, 73-76.
- [22] Tolentino v. Court of Appeals and Citytrust Banking Corporation, G.R. No. 171354, March 7, 2007, 517 SCRA 732, 744-745.
- [23] TSN, hearing of Civil Case No. 10513 on March 3, 1987, records, Vol. III, pp. 190-191.
- [24] Id. at 199.

[25] EXECUTIVE ORDER NO. 80

PROVIDING FOR THE 1986 REVISED CHARTER OF THE PHILIPPINE NATIONAL BANK (December 3, 1986)

x x x x

Sec. 38. Repealing Clauses. Subject to Section 31 of this Charter, Presidential Decree No. 694, as amended, is hereby repealed. All other laws, decrees, acts, executive orders, administrative orders, proclamations, rules and regulations or parts thereof inconsistent with any of the provisions of this Charter are hereby repealed or modified accordingly. (emphasis supplied)

x x x x

Sec. 31. Banking Operations under the 1986 Revised Charters; Governing Laws. The Banking operations of the Bank shall be governed by the provisions of this Charter beginning on January 1, 1987, or on such subsequent date as may be determine by the President of the Philippine upon the recommendation of the Minister of Finance. (Emphasis supplied)

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