

**METROPOLITAN BANK AND TRUST COMPANY, PETITIONER, VS.
SPOUSES ELISA TAN AND ANTONIO TAN AND SPOUSES LILIAN TAN
AND MARCIAL SEE, RESPONDENTS.**

G.R. No. 178449. October 17, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is a Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure which seeks to set aside the Decision[1] of the Court of Appeals dated 31 January 2007 in CA-G.R. CV No. 86214 affirming in toto the Decision[2] of Branch 32 of the Regional Trial Court (RTC) of Manila in Civil Case No. 97-85012 and its Resolution[3] dated 15 June 2007 denying petitioner's motion for reconsideration.

The factual antecedents are as follows:

In June 1974, Ylang-Ylang Merchandising Company, a partnership between Angelita Rodriguez and respondent Antonio Tan, obtained a loan in the amount of P250,000.00 from petitioner Metropolitan Bank and Trust Company (Metrobank). To secure payment of the same, respondents spouses Marcial See and Lilian Tan[4] constituted a real estate mortgage in favor of petitioner over their property consisting of 469.40 square meters, located in the District of Paco, Manila, covered by Transfer Certificate of Title (TCT) No. 105233 of the Registry of Deeds of Manila. The mortgage, dated 14 June 1974, was annotated at the back of the title.[5]

Subsequently, after the partnership had changed its name to Ajax Marketing Company, albeit without changing its composition, it obtained another loan in July 1976 in the amount of P150,000.00 from Metrobank. Again, to secure the loan, spouses Marcial See and Lilian Tan executed in favor of Metrobank a second real estate mortgage dated 26 August 1976 over the same property. As in the first instance, the mortgage was annotated at the back of TCT No. 105233.[6]

On 19 February 1979, the partnership (Ajax Marketing Company) was converted into a corporation denominated as Ajax Marketing and Development Corporation (Ajax Marketing), with the original partners (Angelita Rodriguez and Antonio Tan) as incorporators and three additional incorporators, namely, respondent Elisa Tan, the wife of respondent Antonio Tan, and Jose San Diego and Tessie San Diego. Ajax Marketing obtained from Metrobank a loan in the amount P600,000.00, the payment of which was secured by another real estate mortgage executed by the spouses Marcial See and Lilian Tan over the same property in favor of Metrobank. The third real estate mortgage was annotated at the back of TCT No. 105233.

On 2 December 1980, the three loans with an aggregate amount of P1,000,000.00 were re-structured and consolidated into one loan and Ajax Marketing, represented by Antonio Tan as Board Chairman/President and in his personal capacity as solidary co-obligor, and Elisa Tan as Vice-President/Treasurer and in her personal capacity as solidary co-obligor, executed Promissory Note (PN) No. BDS-3605. Said loan was payable in eight (8) equal quarterly installments of P125,000.00 starting 2 March 1981 until fully paid.[7]

On 24 April 1984, Metrobank filed a case for sum of money before the RTC of Manila against Ajax Marketing, Elisa Tan and Antonio Tan for another loan earlier obtained in the amount of P970,000.00 that the latter obtained from the former for which they executed Promissory Note (PN) No. BDS-3583. The case was docketed as Civil Case No. 84-24065.[8] Subsequently, the lower court decided this case in favor of Metrobank which decision was affirmed by the Court of Appeals.

For failure of Ajax Marketing to pay its obligation contained in PN No. BDS-3605, Metrobank foreclosed the real estate mortgage. On 19 June 1984, the mortgaged property was sold at public auction for P1,775,040.00 to Metrobank, it having the highest and winning bid.

On 11 December 1984, Civil Case No. 85-33933 for Annulment and Cancellation of Extra-judicial Foreclosure Sale with Preliminary Injunction, Restraining Order and Damages was filed by Ajax Marketing and spouses Marcial See and Lilian Tan, represented by their Attorney-in-Fact, Elisa Tan, and spouses Antonio Tan and Elisa Tan (spouses Tan) against Metrobank and the Registry of Deeds of Manila. The complaint asked that the extrajudicial foreclosure, as well as the auction sale, be declared null and void on the ground that the real estate mortgages constituted on the property covered by TCT No. 105233 have been extinguished or novated when PN No. BDS-3605 was executed. The trial court upheld the validity of the extra-judicial foreclosure. On appeal to the Court of Appeals, the appellate court affirmed the decision of the trial court. The decision was appealed to the Supreme Court.

In a letter dated 2 February 1995, spouses Antonio Tan and Elisa Tan wrote Metrobank a letter[9] containing, inter alia, the following:

To end the controversy once and for all, the undersigned spouses hereby proposes (sic) to fully settle the obligations of the borrowers in exchange of your release of the Real Estate Mortgage you are presently holding, to wit:

1. We propose to pay the total amount of P2MM to be paid as follows:
 - a) Downpayment of P600,000.00 two (2) weeks upon approval of our proposal;
 - b) Balance of P1.4MM shall no longer be subject to interest and to be liquidated in 24 months or P58,333.33 to be covered by postdated checks.
2. Attorney's fees shall be separately paid by us.

On 14 September 1995, this Court rendered its Decision[10] in Civil Case No. 85-33933 for Annulment and Cancellation of Extra-judicial Foreclosure Sale with Preliminary Injunction, Restraining Order and Damages. We ruled:

[P]etitioners argue that a novation occurred when their three (3) loans which are all secured by the same real estate property covered by TCT No. 105233 were consolidated into a single loan of P1 million under Promissory Note No. BDS-3605, thereby extinguishing their monetary obligations and releasing the mortgaged property from liability.

x x x x

The attendant facts herein do not make a case of novation. There is nothing in the records to show the unequivocal intent of the parties to novate the three loan agreements through the execution of PN No. BDS-3065. The provisions of PN No. BDS-3605 yield no indication of the extinguishment of, or an incompatibility with, the three loan agreements secured by the real estate mortgages over TCT No. 105233. x x x

x x x x

x x x [P]etitioners posit that the extra-judicial foreclosure is invalid as it included two unsecured loans: one, the consolidated loan of P1.0 million under PN BDS No. 3605, and two, the P970,000.00 loan under PN BDS No. 3583 subsequently extended by Metrobank.

An action to foreclose a mortgage is usually limited to the amount mentioned in the mortgage, but where on the four corners of the mortgage contracts, as in this case, the intent of the contracting parties is manifest that the mortgaged property shall also answer for future loans or advancements then the same is not improper as it is valid and binding between the parties. For merely consolidating and expediently making current the three previous loans, the loan of P1.0 million under PN BDS No. 3605, secured by the real estate property, was correctly included in the foreclosure's bid price. The inclusion of the unsecured loan of P970,000.00 under PN BDS No. 3583, however, was found to be improper by public respondent which ruling we shall not disturb for Metrobank's failure to appeal therefrom. Nonetheless, the inclusion of PN BDS No. 3583 in the bid price did not invalidate the foreclosure proceedings. As correctly pointed out by the Court of Appeals, the proceeds of the auction sale should be applied to the obligation pertaining to PN BDS No. 3605 only, plus interests, expenses and other charges accruing thereto. It is Metrobank's duty as mortgagee to return the surplus in the selling price to the mortgagors.

On 12 September 1997, spouses Elisa Tan and Antonio Tan and spouses Lilian Tan and Marcial See filed a civil case for Specific Performance, Injunction and Damages before the RTC of Manila, Branch 30, against Metrobank and Ajax Marketing (origin of the instant petition). They prayed, among other things, that Metrobank be ordered to allow them (spouses Tan) to exercise their right of redemption over the subject foreclosed property and to accept the amount of P1,609,334.61 as the redemption price, and to order Ajax Marketing to reimburse them the amount which they will pay as redemption price for the foreclosed property.[11]

On 4 November 1997, an amended compliant was filed.[12] They included as defendants John Doe and Peter Doe. They made the following allegations:

Spouses See and spouses Tan alleged that the property covered by TCT No. 105233, though registered in the names of spouses Marcial See and Lilian Tan See is, in reality, co-owned by respondents and their other siblings. They further allege that after the foreclosure sale, they offered to redeem the property within the one-year redemption period and they discovered that Metrobank included in the bid price an amount covered by PN No. BDS-3583 not secured by the mortgage over TCT No. 105233. They claim that while the tender and offer of the redemption was seasonably made, same cannot be made because Metrobank was ambivalent with respect to the redemption price. Redemption, they claim, was rendered doubly difficult when Metrobank filed Civil Case No. 84-24065 with the RTC of Manila to collect on PN No. BDS-3583. On their part, they filed Civil Case No. 85-33933 before the RTC of Manila for annulment and cancellation of the extra-judicial foreclosure of the mortgage over TCT No. 105233 rendering more difficult the resumption of negotiation for redemption of the foreclosed property. On 14 September 1995, the Supreme Court, in G.R. No. 118585, declared the extra-judicial foreclosure valid but found the inclusion of PN No. BDS-3583 in the bid price to be improper but same did not invalidate the foreclosure proceedings. After said decision, they resumed to negotiate for the redemption of the foreclosed property and tendered and offered P1,609,334.61 which Metrobank rejected and declined. They further alleged that Metrobank encouraged their other siblings to repurchase the foreclosed property at a price over and above the lawful redemption price. In fact, Metrobank sold the property to John and Peter Doe for P11,500,000.00 in complete disregard of their right of redemption. They claim that Metrobank cannot sell the property because ownership thereof has not been vested absolutely in its favor until they have exercised their right of redemption. The sale of the property to their other siblings was fraudulent and therefore void. Because of the sale, they and their other siblings were divested of their share in the property and are additionally required by the purchasing

siblings to reimburse a portion of the repurchase price (P11,500,000.00), thereby fomenting trouble within the family. They asked, among other things, that the sale of the property between Metrobank and defendants John and Peter Doe be declared null and void ab initio and that Metrobank be ordered to allow them to exercise their right of redemption by accepting the amount of P1,609,334.61 as the redemption price.

On 6 November 1997, Spouses Marcial See and Lilian Tan executed a document entitled "Deed of Redemption and Reconveyance" wherein it was stated that the latter (redemptioners) paid Metrobank on 12 September 1997 the amount of P11,500,000.00 representing the redemption price for the reconveyance/redemption of the foreclosed property (TCT No. 105233).[13]

On 2 February 1998, Metrobank filed a Motion to Dismiss on the ground that the claims and demands in the amended complaint have been extinguished. Metrobank disclosed that the subject property was not sold to John and Peter Doe, but to spouses Marcial See and Lilian Tan. As registered owners of the property, the spouses were allowed to exercise their right of redemption on 6 November 1997 as evidenced by the Deed of Redemption and Reconveyance.[14] On 7 December 1998, the motion was denied.[15]

On 3 February 1999, Metrobank filed its Answer with Counterclaim. It declared that John and Peter Doe are none other than spouses Marcial See and Lilian Tan. It alleged that neither Ajax Marketing nor the plaintiffs (respondents herein) were able to redeem the subject property within the one-year period which commenced from the date (20 June 1984) the Certificate of Sale issued by the auctioning sheriff was registered with the concerned Registry of Deeds. Respondents did not even approach Metrobank to negotiate the redemption of said property. Instead, Ajax Marketing and respondents instituted on 11 December 1984 an action to annul said extra-judicial foreclosure which foreclosure was upheld by the Supreme Court in G.R. No. 118585 on 14 September 1995. It was only in 1997 that spouses Marcial See and Lilian Tan communicated with Metrobank their intention to buy back the subject property. Metrobank agreed to sell the property for the "redemption" price of P11,500,000.00. It further denied the allegations with respect to the actual ownership of the subject property. It added that the sale of the foreclosed property to spouses Marcial See and Lilian Tan was not fraudulent and that property was redeemed at a mutually agreed price. It explained that spouses Marcial See and Lilian Tan are the proper "redemptioners" of the subject property being the registered owners thereof. As such, Metrobank had the right to allow said spouses to redeem the property and to reconvey the same under mutually agreed terms. It stressed that assuming arguendo that spouses Marcial See and Lilian Tan never redeemed the subject property, spouses Elisa Tan and Antonio Tan offered the amount of P1,609,334.61 when they communicated with Metrobank in 1997 which amount they believe was the redemption price "in esse," Metrobank had rightfully rejected the same for Act No. 3135, as amended, requires the payment of the redemption price equivalent to the winning bid price (P1,775,040.00) plus interest up to the time of redemption, together with the amount of any assessments or taxes paid by the purchaser after the auction sale, and interest on such last-named amount at the same rate.[16]

In its Reply to the Answer, respondents claim the "Deed of Redemption and Reconveyance" does not bear the true and genuine signatures of spouses Marcial See and Lilian Tan. It said that assuming arguendo that the Deed of Redemption and Reconveyance is true, the difference between P11,500,000.00 and P1,775,040.00 should be refunded to them.[17]

On 10 January 2000, the pre-trial of the case was terminated.[18] Thereafter, the case was heard.

Respondents-spouses Elisa and Antonio Tan testified in court on their behalf, while for the defense, only Rito A. Negado, employee of Metrobank, testified on respondents' loan with Metrobank, the execution of respondents Marcial See and Lilian Tan of the accommodation mortgage in favor of Metrobank, and respondents' failure to pay their obligation which led Metrobank to initiate extra-judicial foreclosure proceedings.

While the case was being heard, the presiding judge hearing the case voluntarily inhibited himself from the case. Consequently, the case was re-raffled to Branch 32 of RTC, Manila.[19]

On 5 May 2005, the trial court rendered its decision, the dispositive portion of which reads:

WHEREFORE, premises considered, JUDGMENT is hereby rendered DECLARING the "DEED OF REDEMPTION AND RECONVEYANCE" between Defendant Bank and the Sps. Marcial See and Lilian Tan NULL and VOID ab initio. It is hereby further ADJUDGED that:

- Plaintiffs Spouses Elisa and Antonio Tan are reinstated as Redemptioners with the right to redeem the property foreclosed and mortgaged as they are hereby directed to pay Defendant Bank the sum of Php 1,609,334.61 as redemption price in accordance with the Decision in G.R. No. 118585 and in turn, Defendant Metrobank is ordered to reconvey TCT No. 105233 to plaintiffs in exchange for the said redemption price.
- Defendant Bank is ordered to refund and pay to plaintiffs Sps. Marcial See and Lilian Tan the sum of Php11,500,000.00 with interests at the rate of 12% per annum beginning September 1995 until the whole obligation is fully paid;
- Defendant Bank is finally ordered to pay, in addition to the costs of suit, the sum of Php50,000.00 as and for attorney's fees over and above the contingent arrangement for legal services rendered to plaintiffs Elisa and Antonio Tan by their lawyers.[20]

The RTC ruled that the nullification of the Deed of Redemption and Reconveyance dated 6 November 1997 is warranted. It declared that spouses Elisa and Antonio Tan, as mortgagors of the foreclosed property, are entitled to exercise their right as redemptioners. As such, they should pay Metrobank as redemption price the amount of Php1,609,334.61 or Php1,775,040.00, as the case may be, the latter price being Metrobank's winning bid. The fact that spouses Marcial See and Lilian Tan are the registered owners of the property foreclosed is not sufficient to entitle them to redeem over and above the willingness of spouses Elisa and Antonio Tan to exercise their right of redemption. Spouses Elisa and Antonio Tan have the preferential right as redemptioners of what they have mortgaged.

The trial court ruled that spouses Elisa and Antonio Tan are fully within their right to redeem the foreclosed property after the finality of the Decision in G.R. No. 118585. Technically, it said, the tender and offer of redemption of spouses Elisa and Antonio Tan was within the one-year period reckoned from the registration of the Certificate of Sale in the Registry of Deeds because the redemption period was "freezed" when respondents were forced to file Civil Case No. 85-33933 (Annulment and Cancellation of Extra-judicial Foreclosure Sale with Preliminary Injunction, Restraining Order and Damages) on 11 December 1984 after said tender of redemption price was refused as a result of a misunderstanding as to its amount. Respondents insisted to redeem on the basis of their PN No. BDS-3605 while Metrobank demanded that the redemption price should include the unsecured PN No. BDS-3583. The filing of Civil Case No. 85-33933 within the one-year redemption period preserved spouses Elisa and Antonio Tan's right of redemption until said case has been decided with finality. Citing *State Investment House, Inc. v. Court of Appeals*,[21] *Belisario v. Intermediate Appellate Court*[22] and *Hi-Yield Realty, Inc. v. Court of Appeals*,[23] the Court said that the filing of the Civil Complaint has the effect of freezing the redemption period and preserves the right of the mortgagor to redeem the property foreclosed, and that the filing of the court action to enforce the correct redemption price is equivalent to a formal offer to redeem. The offer to redeem in this case made sometime in 1985 was "frozen" and remained fresh and unexpired until Civil Case No. 85-33933 was finally decided by the Supreme Court on 14 September 1995. Thereafter, the redemption period resumed to run anew.

Metrobank appealed said decision to the Court of Appeals. On 31 January 2007, the appellate court affirmed in

toto the decision of the trial court. It disposed of the case as follows:

WHEREFORE, premises considered, the appeal is DISMISSED for lack of merit and the assailed decision of the court a quo is hereby AFFIRMED in toto. No costs.[24]

The Court of Appeals said that the spouses Elisa and Antonio Tan were granted, no less by the Supreme Court, the right to redeem the contested property. However, despite the finality of the Supreme Court decision in G.R. No. 118585, Metrobank ignored spouses Elisa and Antonio Tan's right to redeem and instead allowed spouses Marcial See and Lilian Tan to redeem the property. It described such act of Metrobank to be contemptuous. It brushed away Metrobank's argument that spouses Elisa and Antonio Tan have no more right to redeem as they failed to make a valid tender since what they did was a mere proposal failing to actually deliver the redemption price. The appellate court added that Metrobank has no right to demand from spouses Elisa and Antonio Tan the actual delivery of the redemption price because it is not legally capacitated to surrender the possession and title of the subject property to said spouses until such time the redemption of spouses Marcial See and Lilian Tan is declared null and void. It agreed with the trial court that the one-year period to redeem the foreclosed property was deemed suspended.

The motion for reconsideration filed by Metrobank was denied.

Hence, this appeal via petition for review on certiorari.

Initially, this Court denied the petition for insufficient or defective verification and for failure to show that the appellate court committed reversible error as to warrant the exercise by this Court of its discretionary appellate jurisdiction.[25] Metrobank filed a motion for the reconsideration. On 12 November 2007, the Court granted the motion and set aside the resolution denying the petition, and required respondents to comment thereon within ten days from receipt of notice.[26] Respondents filed their Comment[27] to which Metrobank filed a Reply.[28]

The Court gave due course to the petition and required the parties to submit their respective memoranda.[29]

Metrobank makes the following assignment of errors:

WHETHER THE COURT OF APPEALS ERRED IN DECLARING THAT METROBANK MUST BE LEGALLY CAPACITATED TO SURRENDER POSSESSION AND TITLE TO THE SUBJECT PROPERTY IN ORDER FOR IT TO BE ABLE TO INVOKE THE LEGAL REQUIREMENT OF THE LAW THAT THERE MUST BE AN ACTUAL TENDER OR DELIVERY OF THE REDEMPTION PRICE FOR AN OFFER TO REDEEM TO BE BINDING.

WHETHER THE COURT OF APPEALS ERRED WHEN IT DECLARED THAT RESPONDENT SPOUSES ANTONIO AND ELISA TAN'S TENDER AND OFFER OF REDEMPTION WAS WITHIN THE ONE-YEAR PERIOD STARTING FROM THE REGISTRATION OF THE CERTIFICATE OF SALE CONSIDERING THAT THE REDEMPTION PERIOD WAS "FREEZED" WHEN RESPONDENTS WERE FORCED TO FILE CIVIL CASE NO. 85-33933 ON DECEMBER 11, 1984 AFTER THEIR TENDER OF THE REDEMPTION PRICE WAS REFUSED BY METROBANK AND THAT THE REDEMPTION PERIOD REMAINED FRESH AND UNEXPIRED UNTIL CIVIL CASE NO. 85-33933 WAS FINALLY ADJUDICATED BY THE SUPREME COURT IN SEPTEMBER 1995.

WHETHER THE COURT OF APPEALS ERRED IN DECLARING THAT METROBANK IS LIABLE TO PAY RESPONDENTS ATTORNEY'S FEES.

WHETHER THE COURT OF APPEALS ERRED IN DECLARING THAT THE TRIAL COURT WAS CORRECT IN SUBMITTING THE CASE IMMEDIATELY FOR DECISION AS THERE WAS UNREASONABLE DELAY ON THE PART OF METROBANK IN THE PRESENTATION OF ITS EVIDENCE.[30]

There is no dispute that respondents were already in default in the payment of their obligation. Thus, Metrobank had the right to foreclose any real estate mortgage executed in its favor as security for the loans it has given to respondents. Foreclosure is valid where the debtor is in default in the payment of his obligation. In a real estate mortgage when the principal obligation is not paid when due, the mortgagee has the right to foreclose the mortgage and to have the property seized and sold with the view of applying the proceeds to the payment of the obligation.[31]

In the resolution of this case, two primary issues have to be resolved:

- Did the filing of Civil Case No. 85-33933 (Annulment and Cancellation of Extra-judicial Foreclosure Sale with Preliminary Injunction, Restraining Order and Damages) by respondents on 11 December 1984 interrupt the running of the one-year redemption period?
- Did spouses Elisa and Antonio Tan exercise their right of redemption within the one-year period allowed by law?

From the records, the foreclosure sale was on 19 June 1984 and the Certificate of Sale issued by the sheriff was registered with the Registry of Deeds of Manila on 20 June 1984. On 11 December 1984, Civil Case No. 85-33933 for Annulment and Cancellation of Extra-judicial Foreclosure Sale was filed by respondents. On 2 February 1995, spouses Antonio Tan and Elisa Tan wrote Metrobank a letter proposing to redeem the subject for P2,000,000.00 payable as follows: downpayment of P600,000.00 and the balance payable in 24 months (P58,333.33/month) without interest. Thereafter, on 14 September 1995, this Court, in G.R. No. 118585, ruled with finality that the extrajudicial foreclosure and sale were valid.

The lower courts ruled that the filing of Civil Case No. 85-33933 suspended the running of the one-year redemption period for which spouses Elisa and Antonio Tan can exercise their right of redemption. The tender and offer of redemption made by spouses Elisa and Antonio Tan was within the one-year redemption period. On the other hand, Metrobank insists that the filing of said case did not toll the running of said redemption period and that they failed to exercise said right with the allowable period of one year.

The filing of Civil Case No. 85-33933 (Annulment and Cancellation of Extra-judicial Foreclosure Sale) did not toll the running of the one-year redemption period. Settled is the rule that the period within which to redeem the property sold at a sheriff's sale is not suspended by the institution of an action to annul the foreclosure sale.[32] Thus, both lower courts erred in ruling that the one-year redemption period was interrupted.

It is apparent from the complaint filed in Civil Case No. 85-33933 that the issue advanced by respondents is whether the extrajudicial foreclosure, as well as the auction sale, is void because the real estate mortgages constituted on the property covered by TCT No. 105233 have been extinguished or novated when PN No. BDS-3605 was executed. There is nothing in the complaint that deals with any right of redemption. Respondents wanted to have the extrajudicial foreclosure proceedings nullified on the ground that their obligation under PN No. BDS-3605 was no longer secured by any mortgage.

We likewise find the declaration of the Court of Appeals that the spouses Elisa and Antonio Tan were granted by the Supreme Court the right to redeem the contested property pursuant to G.R. No. 118585 to be without basis. There is nothing in G.R. No. 118585 that gave respondents the right to redeem. This Court did not even determine the amount of the redemption price which, in the first place, was not raised as an issue. What was upheld in said case was the validity of the extrajudicial foreclosure despite the inclusion therein of an unsecured loan.

Having ruled that Civil Case No. 85-33933 did not toll the running of the one-year redemption period, did spouses Elisa and Antonio Tan exercise their right of redemption within this period? They did not.

Section 6 of Republic Act No. 3135,[33] as amended by Republic Act No. 4118, provides:

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 the sale; x x x. (Emphasis supplied.)

We, however, have consistently ruled that the one-year redemption period should be counted not from the date of foreclosure sale, but from the time the certificate of sale is registered with the Registry of Deeds.[34]

In the case before us, the certificate of sale was registered with the Registry of Deeds of Manila on 20 June 1984. Under Article 13 of the Civil Code, a year is understood to be three hundred sixty-five (365) days. Thus excluding the first day and counting from 20 June 1984, respondents spouses Tan had only until 20 June 1985 within which to redeem the foreclosed property in accordance with law. Prior to this date, they did not exercise their right to redeem the foreclosed property.

The only credible evidence respondents presented to show that they allegedly offered to redeem the subject property was the letter[35] of spouses Elisa and Antonio Tan dated 2 February 1995 where they offered the amount of two million pesos (in installment) as settlement of their obligation and for the release of the real estate mortgages on TCT No. 105233. Other than this, we find nothing concrete to prove that they (spouses Tan) tried to redeem within the one-year period and even after when this Court ruled in G.R. No. 118585 on 14 September 1995. Their claims that they tendered their offer to redeem on various times are all unsubstantiated and which Metrobank has denied.

The general rule in redemption is that it is not sufficient that a person offering to redeem manifests his/her 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. Bona fide redemption necessarily implies a reasonable and valid tender of the entire purchase price, otherwise the rule on the redemption period fixed by law can easily be circumvented.[36] There is no cogent reason for requiring the vendee to accept payment by installments from the redemptioner, as it would ultimately result in an indefinite extension of the redemption period.[37]

In order to effect a redemption, the judgment debtor must pay the purchaser the redemption price composed of the following: (1) the price which the purchaser paid for the property; (2) interest of 1% per month on the purchase price; (3) the amount of any assessment or taxes which the purchaser may have paid on the property after the purchase; and (4) interest of 1% per month on such assessment and taxes.[38]

Even assuming that such offer was made by the spouses Elisa and Antonio Tan within the one-year redemption period, we find said offer in the amount of two million pesos to be invalid and ineffectual. It is clear from the letter that the tender was in installments. Same will not do for there is no showing that Metrobank agreed via such payment. By paying in installments, the redemption period will be extended. It could be otherwise if Metrobank agreed; in such case, the concept of legal redemption will be converted into one of conventional redemption.[39] Moreover, though there was an offer, there was no evidence that there was an actual and simultaneous tender of payment. 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.[40]

The trial court, citing *State Investment House, Inc. v. Court of Appeals*,[41] *Belisario v. Intermediate Appellate Court*[42] and *Hi-Yield Realty, Inc. v. Court of Appeals*,[43] declared that the filing of the Civil Complaint has the effect of freezing the redemption period and preserves the right of the mortgagor to redeem the property foreclosed, and that the filing of the court action to enforce the correct redemption price is equivalent to a formal

offer to redeem. Such rule has no application in the instant case. Such rule applies only when the complaint to enforce a repurchase is filed within the period of redemption in which case, the same will be equivalent to an offer to redeem and have the effect of preserving the right of redemption. In the case before us, the complaint for redemption (Specific Performance) was filed beyond the one-year redemption period or on 12 September 1997, more than twelve years from 20 June 1985 which is the last day of said period. We do not consider the complaint filed by respondents on 11 December 1984, docketed as Civil Case No. 85-33933, for Annulment and Cancellation of Extra-judicial Foreclosure Sale to be an action for judicial redemption because its purpose was not for redemption but for nullification of extrajudicial foreclosure sale.

In the case at bar, respondents spouses Elisa and Antonio Tan failed to show good faith on their part. They have failed to validly tender any redemption price nor consigned any amount, in any of the cases they have filed, which they believed was the correct amount, if only to show their willingness and ability to pay. It is not difficult to understand why the redemption price should either be fully offered in legal tender or else validly consigned in court. Only by such means can the auction winner be assured that the offer to redeem is being done in good faith.[44]

In the case before us, though the respondents spouses Marcial See and Lilian Tan signed a document entitled "Deed of Redemption and Reconveyance" wherein they were called the "Redemptioners" and that they paid the amount of P11,500,000.00 for the subject property, this Court finds that what was entered into by them and Metrobank was not a redemption, but a sale. Being already the absolute owner of the subject property because spouses Elisa and Antonio Tan failed to properly exercise their right of redemption, Metrobank can sell, to a price of its liking, the foreclosed property to interested buyers which in this case are respondents spouses Marcial See and Lilian Tan. The price itself (P11,500,000.00) is indicative of a sale. If it were a redemption, the price would only be the winning bid price (P1,775,040.00) plus interest up to the time of redemption, together with the amount of any assessments or taxes paid by the purchaser after the auction sale, and interest on such last-named amount at the same rate.

The appellate court's ruling that Metrobank had no right to demand from spouses Elisa and Antonio Tan the actual delivery of the redemption price because it is not legally capacitated to surrender the possession and title of the subject property to said spouses until such time the redemption of spouses Marcial See and Lillian Tan is declared null and void, is flawed.

Metrobank, as the highest bidder in the public auction sale, can demand from the redemptioner, in this case spouses Elisa and Antonio Tan, the purchase price and taxes it had paid for the property, together with interests with the one-year redemption period. If same is not paid by the redemptioner within the time prescribed by law, the latter loses his/her right to redeem, and the buyer of the foreclosed property becomes its absolute owner. Prior to selling the property to spouses Marcial See and Lilian Tan via the Deed of Redemption and Reconveyance, Metrobank already consolidated its ownership over the foreclosed property. We will not nullify the "redemption" (purchase) made by spouses Marcial See and Lilian Tan so that respondents spouses Elisa and Antonio Tan can exercise their right of redemption which has long been lost for their failure to exercise the same in accordance with law.

The trial court's ruling that respondents spouses Elisa and Antonio Tan should be allowed to redeem the foreclosed property because Metrobank "allowed the execution of the Deed of Redemption and Reconveyance to a wrong person and for wrong reason" is erroneous. As explained above, we consider the "redemption" for P11,500,000.00 made by spouses Marcial See and Lilian Tan to be a sale in the guise of a redemption. Such "redemption" will not restore respondents spouses Elisa and Antonio Tan's right to legally redeem the subject property which right they have lost.

Respondents spouses Elisa and Antonio Tan were granted by the law the right of redemption which they failed to exercise validly and effectively. Having failed to redeem the foreclosed property in the manner and within the period prescribed by law, they have lost any right and interest over the subject property. In so doing, Metrobank has the right to dispose of said property as it deems fit.

WHEREFORE, all the foregoing considered, the instant petition for review on certiorari is GRANTED and the Decision of the Court of Appeals dated 31 January 2007 and its Resolution dated 15 June 2007 in CA-G.R. CV No. 86214 are hereby REVERSED and SET ASIDE. The complaint in Civil Case No. 97-85012 before the Regional Trial Court of Manila, Branch 32, is DISMISSED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Azcuna, and Nachura, JJ., concur.

[*] Per Special Order No. 521, dated 29 September 2008, signed by Chief Justice Reynato S. Puno, designating Associate Justice Adolfo S. Azcuna to replace Associate Justice Ruben T. Reyes, who is on official leave.

[1] Penned by Associate Justice Andres B. Reyes, Jr. with Associate Justices Noel G. Tijam and Sesinando E. Villon , concurring; rollo, pp. 35-48.

[2] Records, pp. 356-364.

[3] Id. at 33-34.

[4] Referred to as Lillian in some documents.

[5] Records, p. 22.

[6] Id. at 23.

[7] Records, p. 14.

[8] Id. at 17-19, 101.

[9] Exh. D, records, p. 239.

[10] Ajax Marketing & Development Corporation v. Court of Appeals, G.R. No. 118585, 14 September 1995, 248 SCRA 222, 226-230.

[11] Records, pp. 8-9.

[12] Id. at 49-56.

[13] Exh. E; Records, pp. 240-241.

[14] Records, pp. 62-65.

[15] Id. at 93.

[16] Records, pp. 99-106.

[17] Id. at 108-110.

[18] Id. at 139.

[19] Id. at 142, 144.

- [20] Id. at 364.
- [21] G.R. No. 99308, 13 November 1992, 215 SCRA 734.
- [22] G.R. No. L-73503, 30 August 1988, 165 SCRA 101.
- [23] 437 Phil. 483 (2002).
- [24] Rollo, p. 48.
- [25] Id. at 54.
- [26] Id. at 185.
- [27] Id. at 186-193.
- [28] Id. at 195-202
- [29] Id. at 262.
- [30] Id. at 299-300.
- [31] State Investment House, Inc. v. Court of Appeals, *supra* note 21 at 744.
- [32] Landrito, Jr. v. Court of Appeals, G.R. No. 133079, 9 August 2005, 466 SCRA 107, 118; citing Conejero v. Court of Appeals, 123 Phil. 605, 612 (1966); Daza v. Tomacruz, 58 Phil. 414, 418 (1933); Sumerariz v. Development Bank of the Philippines, 129 Phil. 641, 648 (1967).
- [33] An Act to Regulate the Sale of Property Under Special Powers Inserted In or Annexed to Real Estate Mortgages.
- [34] Quimson v. Philippine National Bank, 146 Phil. 629, 636 (1970); Eastman Chemical Industries v. Court of Appeals, G.R. No. 76733, 30 June 1989, 174 SCRA 619, 630.
- [35] Exh. D; records, p. 239.
- [36] Tolentino v. Court of Appeals, G.R. No. 171354, 7 March 2007, 517 SCRA 732, 744.
- [37] State Investment House, Inc. v. Court of Appeals, *supra* note 21 at 746.
- [38] Bodiongan v. Court of Appeals, G.R. No. 114418, 21 September 1995, 248 SCRA 496, 501.
- [39] Lazo v. Republic Surety & Insurance Co., Inc., G.R. No. L-27365, 30 January 1970, 31 SCRA 329, 340.
- [40] BPI Family Savings Bank, Inc. v. Veloso, G.R. No. 141974, 9 August 2004, 436 SCRA 1, 8.
- [41] *Supra* note 21.
- [42] *Supra* note 22.
- [43] *Supra* note 23.
- [44] BPI Family Savings Bank, Inc. v. Veloso, *supra* note 40 at 7.

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