

**LETICIA CO, ASSISTED BY HER HUSBAND MUI YUK KONG, IN
SUBSTITUTION OF CITADEL INSURANCE & SURETY CO., INC.,
PLAINTIFF-APPELLEE, VS. PHILIPPINE NATIONAL BANK,
DEFENDANT-APPELLANT.**

G.R. No. 51767. June 29, 1982

Ponente: BARREDO, J.

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BARREDO, J.:

Direct appeal to this Supreme Court pursuant to Republic Act 5440 from the decision of the Court of First Instance of Rizal, Branch XXI in its Civil Case No. 23101 entitled "Citadel Insurance & Surety Co., Inc. vs. Philippine National Bank", the dispositive portion of which reads:

"WHEREFORE, this Court finds that plaintiff has validly exercised the right of redemption herein-before discussed and orders the defendant to:

- (a) Accept the amount consigned and deposited pursuant to the Order of this Court on March 11, 1976;
- (b) Execute and specifically comply to the effects of the exercise of the right of redemption so that whatever title is due to the plaintiff after redemption may properly accrue to plaintiff;
- (c) Deliver and surrender to plaintiff possession over the property in question.

"Considering that this case has been submitted for decision based upon four (4) limited questions of law and there being no evidence presented and submitted to support any claim for damages, there is no pronouncement and award of damages as well as costs.

"SO ORDERED." (Pp. 180-181, Record on Appeal.)

It goes without saying that under the Act aforementioned by virtue of which this appeal is before Us, the issues We are called upon to resolve are only questions of law.

Briefly stated, the undisputed material facts of this case, as may be culled from the decision of the trial court and elsewhere in the record, are as follows:

On November 10, 1961, the Standard Parts Manufacturing Corporation, hereinafter to be referred to simply as STANDARD, executed a real estate mortgage in favor of herein defendant-appellant Philippine National Bank, hereinafter to be referred to simply as PNB, over properties covered by Transfer Certificates of Title Nos. T-5108 and T-5320, both situated in Baguio City, as collateral for a loan consideration of P500,000.00. On February 20, 1963, the same debtor corporation executed an amended real estate mortgage to include as collateral for the increase of the above loan to P1,000,000.00 a property located at Pasong Tamo Extension within the Municipality of Makati (then part of Rizal Province and now of Metro Manila) covered by Transfer Certificate of Title No. 54474. Additionally, on February 20, 1963, the same corporation executed in favor of PNB a chattel mortgage of its personal properties listed on pages 96 to 108 of the Record on Appeal. On pages 6-7 of appellant's brief it is

stated that as of July 19, 1974, the "borrowed loan" of STANDARD totalled P4,296,803.56, and that the said obligation was secured, as aforementioned, by the mortgages on the Baguio and Makati real estates of STANDARD and the chattel mortgage on its personal properties above referred to.

When STANDARD failed to pay its obligation, PNB extra-judicially foreclosed the mortgage on the Baguio properties as well as the chattel mortgage on July 19, 1974, with PNB as the highest bidder for P1,514,305.00. Subsequently, on August 8, 1974, PNB also foreclosed the mortgage on the Makati property and purchased the same, as highest bidder, for P1,363,000.00.

We quote further from appellant's brief:

"When Standard Parts failed to pay its obligation, PNB foreclosed the Baguio properties and chattels on July 19, 1974 with it as the highest bidder for P1,514,305.00 and the Pasong Tamo property on August 8, 1974 also with it as the highest bidder for P1,363,000.00. Hence, after foreclosure of the above-mentioned mortgage, the deficiency claim of the Bank against Standard Parts as of August 8, 1974 amounted to P1,434,521.07. Subsequently, a Certificate of Sale dated July 19, 1974 was issued by the Sheriff of Baguio City covering TCT Nos. T-5708 and T-5320 (Annex 'C', P.S.F.). A Certificate of Sale dated August 8, 1974 covering TCT No. 54474 was also issued by the Sheriff of Rizal (Annex 'D', P.S.F.) and registered on March 14, 1976 in the Registry of Deeds. Upon failure of Standard Parts to redeem the foreclosed properties within the reglementary period, the PNB consolidated titles to the Baguio properties and TCT Nos. 26080 and 26081 (Annexes 'E' and 'E-1', respectively, P.S.F.) were issued by the Register of Deeds of Baguio City on May 5, 1976 in the name of the Bank. On May 14, 1976, TCT No. 54474 was cancelled and TCT No. S-28133 issued in the name of the PNB.

"Meantime, on March 5, 1976, Citadel wrote PNB a letter (Annex 'H', P.S.F.) stating therein its desire to redeem the property covered by TCT No. 54474, it being the alleged assignee of the right of redemption of Standard Parts with respect only to said property. Citadel, however, offered to redeem the property for only P1,621,970.00. In its reply to said letter, PNB, in a letter dated March 5, 1976 (Annex 'I', P.S.F.), justifiably refused to accept the tender of payment of Citadel considering that the amount of P1,621,970.00 was very much lower than the Bank's total claim of P3,366,546.42 as of March 5, 1976 per the Statement of Account of Standard Parts (Annex 'G', P.S.F.)." (Pp. 7-9, Brief of PNB)

To Our mind then, the facts that are decisive herein the following:

1. The mortgages here in question were constituted way back in 1961 to 1963.
2. The foreclosure sale of the Baguio properties and the chattels took place on July 19, 1974 and that of the Makati estate on August 8, 1974.
3. Citadel Insurance & Surety Co., Inc. (CITADEL, for short) to whom STANDARD had in the meanwhile (or on February 20, 1976) transferred its rights in the mortgages here in issue, wrote PNB on March 5, 1976 stating that it was redeeming the Makati property, offering to pay therefor as redemption price P1,621,970.00. The letter of CITADEL in this regard reads thus:

"CITADEL INSURANCE & SURETY CO., INC.

Suite 202 Sikatuna Bldg., Ayala Ave.
Makati, Rizal
Tel. No. 87-33-07 & 87-34-44

March 5, 1976

PHILIPPINE NATIONAL BANK
Escolta, Manila

Re: Legal Redemption of Extra-Judicial
Foreclosed Property of Standard
Parts Manufacturing Corporation
Under Act No. 3135, As Amended

Gentlemen:

In connection with the above-mentioned property which is covered by TCT No. 54474 of the Register of Deeds For the Province of Rizal, we wish to inform you that the CITADEL INSURANCE & SURETY CO., INC., is the Assignee of the right of redemption, which will expire on March 11, 1976, by virtue of a 'Deed of Assign-ment and Waiver of Redemption Rights' dated February 29, 1976, photostat copy of which is attached to this letter as Annex 'A'.

As assignee of the aforementioned Right of Redemption, our Company is now exercising the same by tendering to you the redemption price computed as follows:

P1,363,000.00 - total bid of the PNB per its letter to the Sheriff dated August 8, 1974;

P 258,970.00 - interest at the rate of 1% a month from the date of auc-tion, August 8, 1974, up to the time of redemption;

_____-_____

P1,621,970.00 - TOTAL

as evidenced by RCBC Manager's Check No. MC 194188 dated March 4, 1976, which is attached to this letter as Annex 'B'.

In view of the foregoing, kindly acknow-ledge the receipt of the redemption amount and cause the issuance of the corresponding Certificate of Redemption in favor of our Company.

Thank you.

Very truly yours,

(Sgd.) FRANCISCO S. CORPUS
President

Att.: a/s" (Pages 131-133, Record on Appeal)

4. Immediately or on even date PNB rejected the above tender, contending that the offered price was much lower than P3,366,546.42,[1] of said date March 5, 1976, which PNB maintained was the correct redemption price. The following was the reply of PNB:

"PHILIPPINE NATIONAL BANK
LEGAL DEPARTMENT

March 5, 1976
Mr. Francisco S. Corpus
President

Citadel Insurance & Surety Co., Inc.
202 Sikatuna Bldg., Ayala Ave.
Makati, Rizal

Dear Mr. Corpus:

This refers to your letter of March 5, 1976 wherein you expressed your desire to redeem the property covered by TCT No. 54474 of the Register of Deeds of Rizal which we acquired from Standard Parts Manufacturing Corp. in the amount of P1,621,970.00 in the form of RCBC Manager's Check No. MC 194188 dated March 4, 1976.

We feel that the Legal Department is in no position to decide the acceptance of your offer because it appears that the amount offered is less than our total claim. We suggest, therefore, that you see either Vice President Andres L. Africa or Asst. Vice Pres. Raul Leveriza on Monday, March 8, 1976.

Very truly yours,

(Sgd.) ARTEMIO S. TIPON
Senior Supervising Atty."

(Pp. 133-134, Record on Appeal.)

5. The Certificate of Sale dated August 8, 1974 covering TCT No. 54474 was issued by the Sheriff of Rizal and registered on March 14, 1976 in the Registry of Deeds. (Page 8, PNB's brief) Notably, however, according to the decision of the trial court, the certificate of sale was registered on March 11, 1976. (Page 176, Record on Appeal.)

6. On March 11, 1976, CITADEL filed the instant action in the court below with the following prayer:

"PRAYER

"WHEREFORE, it is respectfully prayed that upon the filing of this complaint this Honorable Court forthwith issue an order authorizing its Branch Clerk to accept a Manager's Check in the amount of P1,621,970.00 and deposit the same with the Rizal Commercial Banking Corporation under a Savings Account in order that the same shall not remain idle, and in the name of defendant PNB, subject to the control and disposition of this Honorable Court; and after hearing, judgment be rendered:

"(a) Ordering defendant to accept the amount so deposited, and/or such amount as may be found by this Honorable Court to be the lawful redemption price for the particular property in question;

"(b) Ordering defendant to turn over the title and possession of the property in question to plaintiff, together with its fruits from March 11, 1976 up to the time possession is actually surrendered to the plaintiff, plus the interests thereon counted from the date of filing of this complaint;

"(c) Ordering defendant to execute such documents and papers that may be necessary for the transfer of the title and possession of the property in question to plaintiff;

"(d) Ordering defendant to pay plaintiff damages in the form of attorney's fees and expenses of litigation, the amount of which is left to the sound discretion of this Honorable Court;

"(e) Ordering the defendant to pay the costs of suit.

"PLAINTIFF FURTHER PRAYS for such other relief as may be found just and equitable in the premises."
(Pp. 6-8, Record on Appeal.)

7. There is no dispute that a manager's check of the Rizal Commercial Banking Corporation No. MC 194188 dated March 4, 1976 and in the amount of P1,621,970.00 (Pp. 14-15, Record on Appeal) accompanied the complaint and was actually deposited under a savings account with the same bank by order of the trial court of the same date "in the name of the PNB subject to the control and disposition of the Court." (p. 20, Record on Appeal.)

In the light of the foregoing facts, the parties stipulated in the partial stipulation facts they submitted to the trial

court that:

"B. Limitation of Issues

"The parties agreed that the issues raised by the pleadings are one of law, to wit:

"1. Whether the redemption period has expired.

"2. What is the correct redemption amount required under the law?

"3. Whether there was a valid and effective tender of payment.

"4. Whether the Deed of Assignment is binding and enforceable against defendant PNB." (P. 151, Record on Appeal.)

Timeliness of the

redemption

To be sure, We find the opposing postures of the parties on the timeliness of the redemption here in question a little blurred and confusing. So, rather than to try to extricate Ourselves out of such maze, We feel it is sufficient to point out that according to the brief of appellant, the foreclosure sale of the subject property was made on August 8, 1974 (pp. 7-8) and the corresponding certificate of sale was issued by sheriff on the same day and "re-gistered on March 14, 1976 in the Register of Deeds." (p. 8, Record on Appeal.) "On May 14, 1976 TCT 54474 was cancelled and TCT No. S-28133 issued in the name of PNB". (id.)[2]

In such ambiguous premises, We have no alternative than to use March 11, 1975[3] as point of reference regarding the date of the registration of the certificate of sale. Appellant assumes that on this basis the period of redemption was up to March 10, 1976. Well, the truth of the matter is that this detail is tied up inextricably to the main question of law that pervades the whole of this controversy.

What is the law applicable

to this case as to the period

of redemption?

Let us not forget that the mortgage at issue was executed in 1963. True it is that as underscored by counsel for PNB, STANDARD, the predecessor-in-interest of CITADEL, who signed the deed of mortgage agreed, and CITADEL is bound by such agreement, "to abide and to be bound by the provisions of the Charter of the PNB". Specifically paragraph (g) of said real estate mortgage provides:

"(g) The mortgagor hereby waives the right granted him under Section 119 of Commonwealth Act No. 141, known as the Public Land Act, as amended and agrees to abide to be bound by the provisions of Act No. 3135 or Act No. 2933, which amended Act No. 1612, or Republic Act No. 1300, as amended, known as the New Charter." (Page 15, PNB's Brief.)

Going by the literal terms of this quoted provision, STANDARD/CITADEL stand bound by the same. In other words, paragraph (g) of the mortgage contract made the provisions of Act No. 3135 or Act 2933, which amended Act No. 1612, or Republic Act 1300, as amended, known as the new Charter part and parcel of the mortgage contract. Now, what is the legal import or consequence of such express incorporation of and submission to Act 3135 and Republic Act 1300 by STANDARD/CITADEL?

Republic Act 1300 entitled "An Act Revising the Charter of the Philippine National Bank" was approved and made effective on June 16, 1955. It was therefore the law when in 1963 the mortgage here in dispute was

executed. It was the very law that the above-quoted paragraph (g) of the mortgage contract made reference to. In this connection, evidently overlooked by counsel for PNB is that Republic Act 1300 does not contemplate extrajudicial procedure. Clearly indicative of this is Section 20 thereof which provides:

"Sec. 20. Right of redemption of property foreclosed. - The mortgagor shall have the right, within the year after the sale of real estate as a result of the foreclosure of a mortgage, to redeem the property by paying the amount fixed by the court in the order of execution, with interest thereon at the rate specified in the mortgage, and all the costs and other judicial expenses incurred by the Bank by reason of the execution and sale and for the custody of said property."

Indeed, conventional legal and banking business sense dictates that it must have been because of such omission that paragraph (g) above had to expressly incorporate Act 3135 which provides for extrajudicial foreclosure. We cannot, therefore, escape the conclusion that what STANDARD agreed to in respect to the possible foreclosure of its mortgage was to subject the same to the provisions of Act 3135 should the PNB opt to utilize said law instead of Republic Act 1300.

On the other hand, Act 3135, as amended by Act 4018, is of 1924 vintage. Its Section 6 very clearly governs the right of redemption in extrajudicial foreclosures 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 the sale; and such redemption shall be go-vern-ed 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."

Sections four hundred sixty-four to four hundred sixty-six, inclusive, of the Code of Civil Procedure, since the promulgation of the Rules of Court of 1940, became Sections 29, 30 and 34 of Rule 39. The same sections were reiterated in the Revised Rules of Court in July 1964.

From all the foregoing, We are of the considered opinion and so hold that STANDARD's/CITADEL's period of redemption was up to March 10, 1976.[4] That CITADEL filed its complaint to compel PNB to accept its redemption only on March 11, 1976 is of no moment. The unequivocal tender of redemption was made in the letter of Francisco S. Corpus, its President, of March 5, 1976 accompanied by a manager's check of the Rizal Commercial Banking Corporation, a well known, big and reputable banking institution, for the amount it believed it should pay as redemption price. PNB rejected it on the sole and only ground that it considered the amount insufficient. The Court, therefore, holds that the redemp-tion was made on time, that is, within one year (or even twelve months) from the date appearing as the date of the registration of the certificate of sale.

How about the amount needed

for such redemption?

On this score, PNB insists on p. 9 et. seq. of its brief on the applicability to this case of "Section 25 of Presidential Decree No. 694, otherwise known as the new PNB Charter" which 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 fore-closure sale and custody of the property, as well as charges and accrued interests."

But P.D. 694 took effect only on May 8, 1975. PNB's counsel himself has, as already mentioned above, taken the position that it was the old PNB Charter, Republic Act 1300, that was expressly made part of the contract. In other words, it was by virtue of such contractual stipulation and not *ex proprio vigore* that the provisions of the bank's then current charter bound the mortgagor STANDARD. But prescinding from possible legal flaw in such pose, and that all provisions of the charter are enforceable and must be read into all mortgages with the PNB as integral parts thereof, in this instant case, the Court finds its hands inert and shackled in the face of the constitutional proscription against the impairment of contracts. (Sec. 11, Art. IV, New Constitution) Stated otherwise, since the contract of mortgage herein was entered into under a specific law, Republic Act 1300, even the principle that no law is unamendable nor unrepealable cannot hold, when the subsequent legislative enactment, P.D. 694, would alter and modify to the prejudice of any of the parties the terms of the contract under the aegis of the prior law. Indisputably, the application of P.D. 694 to the mortgage herein involved would violate the Constitution. Hence, it simply cannot apply.

Stated otherwise, by virtue of the provision of the mortgage contract precisely cited by PNB, namely, its paragraph (g), quoted earlier, PNB had the contractually acquired option to resort either to its Charter, Republic Act 1300 or to Act 3135. When it foreclosed the mortgage at issue, it chose Act 3135. That was an option it freely exercised without the least intervention of appellee. And it was exercised before P.D. 694 came into being. In fact, the foreclosure sales took place in 1974 yet. And so, to make the redemption subject to a subsequent law would be obviously prejudicial to the party exercising the right to redeem. Without considering the date the loan was secured and the date of the mortgage contract, and taking into account only the dates of the foreclosures and auction sales, it is quite obvious that any change in the law governing redemption that would make it more difficult than under the law at the time of the sale cannot be given retroactive effect. Under the terms of the mortgage contract, the terms and conditions under which redemption may be exercised are deemed part and parcel thereof whether the same be merely conventional or imposed by law. To alter those terms in a manner prejudicial to the mortgagor or the person redeeming the property as his successor-in-interest after the foreclosures and sales would definitely come within the constitutional proscription against impairment of the obligations of contracts.

Having thus come to the ineludible conclusion that Act 3135 and Sections 29 to 32 of Rule 39 of the Rules of Court rather than P.D. 694 are the laws applicable to the right of redemption invoked by appellee in this case,[5]it would appear that all that remains for Us to do is to apply the said legal precepts. Pursuant to Section 30 of Rule 39, "the judgment debtor - - (or his successor-in-interest per Section 29, here Leticia Co.) may redeem the property from the purchaser, (here PNB) at any time within twelve months after the sale, on 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 the purchase, and interest on such last-named amount at the same rate; - -"

In this connection, lest it be argued that CITADEL did not include in its tender the amount of assessments or taxes PNB might have paid before the redemption, His Honor, We note that the trial judge, has pointed out that in spite of the requirement in the certificate of sale issued by the sheriff that the purchaser or highest bidder submits within 30 days immediately preceding the expiration of the period of redemption, an appropriate statement of the amount of such assessments or taxes, PNB failed to comply with such requirement, hence it would be unfair to fault CITADEL for the non-inclusion thereof in its tender. PNB argues, however, that it did furnish CITADEL on March 5, 1976 the required data. We note, however, that the statement of P3,366,546.42 specified by PNB in its reply of March 5, 1976 is not clear enough to show the details on taxes and assessments under discussion. In any event, considering that as earlier pointed out by Us, there could be a possibility that March 5, 1976 should be considered as the last day of redemption, the explanation of PNB is, at least in equity, unavailing. There was no more time for CITADEL to have a breakdown of the P3,366,546.42 to find out what items were included therein.

Anyway, this discussion is practically academic because in the manner We are resolving this case, this point would be of no moment.

Before passing to another aspect of this case, it may not be amiss to mention here that in Moran's Comments on the Rules of Court (p. 326-327, 1979 ed.), it is stated that where the judgment debtor, which necessarily includes his successor-in-interest (Section 29, a, Rule 39) validly tenders the necessary payment for the redemption and the tender is refused, it is not necessary that it be followed by the deposit of the money in court or elsewhere (*Enage vs. Vda. de Escano*, 38 Phil. 687) and no interest after such tender is demandable on the redemption money. (*Martinez vs. Campbell*, 10 Phil. 626; *Fabros vs. Agustin*, 18 Phil. 336).

The jurisprudence cited

by PNB are not applicable

Even as We have so far focused Our discussion and resolution of the issues herein on the pertinent statutory provisions, We have not really closed Our eyes to the jurisprudence cited by PNB in its brief, four of which are worthy of mention, namely: *Medina vs. PNB*, 56 Phil. 655; *Nepomuceno vs. RFC*, G.R. No. L-14877, Nov. 23, 1960; *Perez vs. PNB*, 17 SCRA 833 and *DBP vs. Mirang*, 66 SCRA 141.

The case of *Perez*, supra, did not involve a redemption in the sense that it is in issue in this case. In fact, the point involved in the instant case is not even touched in the syllabus thereof in SCRA. This is because what was fundamentally the problem therein was whether or not it was obligatory on the part of the bank-mortgagee to foreclose judicially the mortgage inasmuch as the mortgagor died. As the Court said, "the main issue in this appeal is the application of Section 7, Rule 87 of the Rules of 1940 (now Section 7 of Rule 68), a reproduction of Section 708 of the Code of Civil Procedure". Hence, anything said therein at issue may be deemed as obiter. If anything in that opinion is relevant hereto, it is that portion thereof that justly and equitably holds that from whatever amount should be payable to the mortgagee Bank, should be deducted "the value of any rents and profits derived by the (said) bank from the property in question". (at p. 840)

In the *Nepomuceno* case, supra, what confronted the Court was a question relative to a mortgage with the Rehabilitation Finance Corporation (RFC for short, now the Development Bank of the Philippines). The Court found no difficulty in not applying Section 6 of Act 3135 because it found that there is in Section 31 of the Charter of the RFC a provision basically similar to Section 25 of Presidential Decree 694, now being invoked here by PNB. Naturally, the Court upheld the RFC's contention that the whole amount of the mortgagor's indebtedness should be paid. But in the instant case, as already discussed earlier, P.D. 694 came too late.

DBP vs. Mirang, supra, follows in principle the *Nepomuceno* ruling that the special provisions in the charter of DBP govern in matters of redemption of property acquired by it in a foreclosure sale. So, We need not elucidate any further on its inapplicability hereto.

It is the earlier case of *Medina vs. PNB*, supra, that nearly approximates the position PNB is pressing on Us now, because in a portion of the opinion thereof, Chief Justice Avanceña, as correctly underlined by PNB in its brief, stated:

"As we have indicated above, there is no question with regard to the plaintiffs' right, as successors of the Manila Commercial Company, to repurchase the parcels covered by the transfer certificates of title Nos. 137 and 139. The question is whether, as the bank contends and the trial court has held, the redemption should be made by paying to the bank the entire amount owed to it by the Manila Commercial Company. The appellants contend that this redemption may be made by only reimbursing the bank what it has paid for the sale made to it. In this respect we are also of the opinion that the judgment appealed from is correct." (Page 655)

But this statement needs clarification. Towards the concluding portion of the opinion, he explained that:

"It will be remembered that the mortgage contract between the bank and the Manila Commercial Company was executed on October 30, 1920, before the approval of Act No. 3135 in March, 1924. If, before Act No. 3135 took effect, the Manila Commercial Company had violated the contract, beyond all doubt the bank would have been able to sell the mortgaged property, without the necessity of a judicial action, and the sale thus made would carry the right of repurchase on the part of the debtor through the payment of the entire amount of the debt.

"When the bank's right to foreclose the mortgage of the Manila Commercial Company accrued, Act No. 3135 was already in force. Of course, this law, being general, did not affect the charter of the bank, which was a special law. Thus, when the bank, in order to sell the mortgaged property extrajudicially, resorted to Act No. 3135, it did so merely to find a proceeding for the sale; but that action cannot be taken to mean a waiver of its right to demand the payment of the whole debt before the property can be redeemed. The record contains nothing to show that the bank made this waiver of said right." (Pp. 656-657)

There is here an implication that in undertaking the foreclosure therein involved, the PNB relied on Act 3135. This is not quite accurate, for in the opening paragraph of the same opinion, it is stated that:

"On October 30, 1920 the Manila Commercial Co. and La Yebana Co. mortgaged four parcels of land with Torrens titles, described in the complaint, to the Philippine National Bank, the first and fourth parcels being in the name of the La Yebana Co. and the second and third in the name of the Manila Commercial Co. The mortgage was given to secure the payment of P680,000 or for whatever amount the Manila Commercial Co. might be indebted to the Philippine National Bank. One of the clauses of the mortgage provides that in case of a violation by the Manila Commercial Co. of any of the conditions of the contract, the Philippine National Bank may take possession of the mortgaged property and sell or dispose of it by public or private sale, without first having to file a complaint or to give any notice, and at such sale, if public, it may acquire for itself all or any of the parcels of land." (Page 651) (Underlinings supplied)

Thus, it is to Our mind closer to the truth that it was by virtue of such contractual clause, rather than Act 3135, even if the request to the sheriff did mention said Act that PNB foreclosed. In any event, the Court did take into account that the mortgage at issue in that case was executed before the approval of Act 3135 and observed that without such Act, the right of the bank to full payment would have been indisputable. This is the same principle of non-impairment of the contracts by subsequent legislative action We have made reference to above in precluding the applicability hereto of P.D. 694.

On the minor issues

We are not impressed that PNB is really serious in its pose that the tender by manager's check by CITADEL was inefficacious. For one thing, that obligation was waived when in its letter of rejection, the bank did not invoke it. (Gregorio Araneta, Inc. vs. De Paterno and Vidal, 91 Phil. 786) More importantly, this Court has already sanctioned redemption by check. (Javellana vs. Mirasol, 40 Phil. 761)

Neither do We find any substantial weight in PNB's pose that the transfer or conveyance of STANDARD's right of redemption to CITADEL and the latter to Leticia Co is not binding on it. In Lichauco vs. Olegario, et al., 43 Phil. 540, this Court held that "whether or not x x x an execution debtor was legally authorized to sell his right of redemption, is a question already decided by this Court in the affirmative in numerous decisions on the precepts of Sections 463 and 464 and other sections related thereto, of the Code of Civil Procedure." (The mentioned provisions are carried over in Rule 39 of the Revised Rules of Court.) That the transfers or conveyances in question were not registered is of miniscule significance, there being no showing that PNB was damaged or could be damaged by such omission. When CITADEL made its tender on May 5, 1976, PNB did not question the

personality of CITADEL at all. It is now too late and purely technical to raise such an innocuous failure to comply with Article 1625 of the Civil Code.

The foregoing discussion inexorably points to the conclusion that the price of redemption of P1,621,970.00 tendered by CITADEL on March 5, 1976 was the correct amount. Since PNB refused to allow the redemption thus legally tendered, applying the law strictly, it would stand to lose P1,744,576.42 of what it claims was the total indebtedness or outstanding obligation of CITADEL as of March 11, 1976.

To avoid this loss, PNB invokes, as already stated above, P.D. No. 694, but We have also pointed out earlier that to apply said decree would result in the impairment of the contractual obligation of CITADEL, which cannot be allowed under the Constitution.

However, We are persuaded that all such considerations would render the result of this case short of what appears to be substantial justice in the light of the situation on hand. It strikes Us as rather unconscionable that by a literal application of the law and perhaps due to a mistake in the amount of the bid made by PNB,[6]the bank would not get full satisfaction of its credit. Indeed, there would be unjust enrichment on the part of the debtor-mortgagor in such an eventuality. Our sense of justice cannot permit such inequitous advantage.

With this point in mind, We deem it fairer and so hold that considering the unique factual milieu of this case, Articles 22 and 2142 of the Civil Code should be the guideposts of Our decision here. Said articles provide:

"ART. 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him."

xxx xxx xxx

"ART. 2142. Certain lawful, voluntary and unilateral acts give rise to the juridical relation of quasi-contract to the end that no one shall be unjustly enriched or benefited at the expense of another."

Although the report of the Code Commission states that:

"Another rule is expressed in article 22 which compels the return of a thing acquired 'without just or legal ground.' This provision embodies the doctrine that no person should unjustly enrich himself at the expense of another, which has been one of the mainstays of every legal system for centuries. It is most needful that this ancient principle be clearly and specifically consecrated in the proposed Civil Code to the end that in cases not foreseen by the lawmaker, no one may unjustly benefit himself to the prejudice of another. The German Civil Code has a similar provision (art. 812)."

it may be said that whatever of the principle of unjust enrichment may not be covered by Article 22, Article 2142 makes its enhancement in this jurisdiction most comprehensive.

Consequently, it is but just and proper that PNB should be paid the full amount of P3,366,546.42 without any interest as of March 11, 1976, when it refused a redemption legally and validly tendered. On the other hand, the amount of P1,621,970.00 tendered by CITADEL on March 5, 1976 and which was deposited in a savings account, drawing interest apparently less than 12% p.a., in the name of PNB by order of the trial court should be computed to have earned legal interest or 12% p.a., compounded annually, since March 11, 1976, provided however that should such amount including the compounded interest at 12% p.a. so earned be less than P3,366,546.42, petitioner herein should pay PNB such difference, and provided, on the other hand, that with this arrangement, PNB does not have to account to CITADEL/LETICIA CO for any of the rentals it had earned from the time it took possession of the pro-property. In the final analysis, instead of PNB losing P1,744,576.42, under strict technical legal reasoning, as explained above, applying hereto the principle of unjust enrichment, which We deem in the

peculiar circumstances at this instant case to be the fairest way of resolving this controversy, it would still be paid by petitioner a certain amount, not to mention what must be quite substantial and considerable, the rentals the said bank it has earned, which it does not have to account for.

In closing, We may add that in *Escaño*, supra, this Court laid down as a policy that "redemptions are looked upon with favor, and when an injury is to follow, a liberal construction will be given to our redemption laws to the end that the property of the debtor may pay as many of the debtor's liabilities", PNB having foreclosed on the Baguio properties and the chattels of STANDARD for what appears could have been a fairer price, it is but in consonance with the *Escaño* policy that the redemption herein involved be allowed on the basis of the injunction against unjust enrichment.^[7] We may add here the observation, taught by common business experience, that when a bank grants a loan, secured by any collateral, what is of uppermost consideration to such lender is the borrower's capacity to pay according to the terms stipulated, and not really the acquisition of the collateral, if only to maintain the bank's liquidity position as conveniently as possible. Acquired assets generally add to liquidity problems of banks. The foreclosure of the security is a measure of last resort, hence when by the exercise of the right of redemption, the bank can recover the money it has loaned, nothing could be more proper than to allow the borrower to retain his property. Of course, peculiar instances are naturally excepted. That is why this decision cannot be invoked as a prece-dent for other parties not exactly similarly situated as the appellee in this case. Should there be any thought that Our resolution of this case is not strictly according to legal principles, let everyone be reminded that this Court has inherent equity jurisdiction it can always exercise in settings attended by unusual circumstances to prevent manifest injustice that could result from bare technical adherence to the letter of the law and unprecise jurisprudence under it.

WHEREFORE, the judgment of the trial court against the Philippine National Bank herein on appeal is hereby modified and another one is hereby rendered in favor of the said defendant-appellant bank in accordance with the formula hereinabove stated, and, accordingly, upon payment by LETICIA CO of the amount due it pursuant to the above computation, PNB is hereby ordered to transfer the title to the property in question to LETICIA CO. This payment must be made within ten (10) days from the finality of this judgment.

No costs.

Concepcion, Jr., Guerrero, De Castro, and Escolin, JJ., concur.
Aquino and Abad Santos, JJ., no part.

[1] How P1,434,521.07, the amount which, according to PNB's brief aforequoted, was its deficiency claim as of August 8, 1974 ballooned to P3,366,546.42 in practically over a year and a half only is not disclosed in the record.

[2] Somewhere in the record, however, PNB claims that the last day for redemption was March 10, 1976, since the date of registration was March 11, 1975, which is the date mentioned in the decision of the trial court.

[3] We do not need further clarification from the parties because even following the data most favorable to appellant, We consider Ourselves adequately prepared to render a just decision.

[4] Although, there could be a legal problem in this regard, albeit inconsequential in this case. While Section 6 of Act 3135 speaks of one year, Section 465 of the Code of Civil Procedure, now Section 30 of Rule 39, limits the period to twelve months, which under the Civil Code (Article 13) should be counted only as 360 days on the basis of 30 days a month. However, We do not believe it essential in this case to resolve any point in connection with this conflict of periods, because even if the period were to be deemed as 360 days, the proper tender of redemption here was made on March 5, 1976, the 360th day.

[5] Leticia Co's substitution for CITADEL was approved by this Court in its resolution of December 15, 1980.

[6] Presumably knowing the property to be worth much more than P3 M, the bid was only P1,363,000.00.

[7] The bank could have bidden the full amount of the indebtedness, there being indications it was worth at least that much. (It is a 4,000 square-meter lot on Pasong Tamo very close to Buendia Avenue with considerable improvements existing thereon.)

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