

**ALFARO FORTUNADO, EDITH FORTUNADO, NESTOR FORTUNADO
AND RAMON A. GONZALES, PETITIONERS, VS. COURT OF APPEALS,
BASILISA CAMPANO, AS CITY SHERIFF OF ILIGAN CITY, REGISTER
OF DEEDS...**

G.R. No. 78556. April 25, 1991

Ponente: CRUZ, J.

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CRUZ, J.:

The petitioners assail the decision of the Court of Appeals[1] denying mandamus to compel the sheriff to execute a final deed of sale in their favor.

On April 21, 1981, the Regional Trial Court of Quezon City[2] rendered judgment in Civil Case No. Q-22367, entitled "Alfaro Fortunado vs. Angel Bautista," ordering the defendant to pay damages to the plaintiff. Pursuant to the said judgment, respondent Basilisa Campano, City Sheriff of Iligan City, levied upon two parcels of land registered in the name of Bautista located at Iligan City and covered by TCT Nos. T-7625 and T-14133. The latter lot had already been purchased by respondent National Steel Corporation as of August 17, 1983, but had not yet been registered in its name.

After due notice, these lots were sold at public auction to the petitioners as the only bidder on April 23, 1984. They were issued a certificate of sale which was registered on April 25, 1984.

On January 10, 1985, NSC gave notice to the sheriff of its intention to redeem the lot covered by TCT No. T-14133. The sheriff suggested that as the two lots had been sold together for the lump sum of P267,013.00, both of them should be redeemed by NSC.

On February 11, 1985, NSC filed with the trial court an urgent motion to redeem both lots. This was opposed by the petitioners on the ground that the movant did not have the personality to intervene.

As the motion remained unresolved and the period of redemption would expire on April 18, 1985, NSC issued to the sheriff on March 20, 1985, PNB Check No. 313551 in the amount of P296,384.43 as the redemption price for the lot covered by TCT No. T-14133. The sheriff acknowledged receipt of the check on the same date.

On March 21, 1985, Bautista sent the sheriff a letter bearing NSC's conformity in which he availed himself of NSC's check, which was sufficient to cover the full redemption price for both lots, to redeem the other lot covered by TCT No. T-7625. His letter contained the following reservation:

This redemption is made solely for the purpose of effecting the execution and delivery to me of the necessary certificate of redemption and the same shall not be taken to mean my acknowledgment of the validity of the aforesaid writ of execution and sale, both of which I shall continue to contest, nor shall this be taken to mean as a waiver on my part of any of the legal rights and remedies available to me under the circumstances.

The sheriff acknowledged receipt of the check as redemption money for the two parcels of land on March 21,

1985, and on March 22, 1985, issued a certificate of redemption in favor of NSC and Bautista.

On March 25, 1985, Bautista wrote the sheriff that he would no longer effect the redemption because there was nothing to redeem, the auction sale being null and void.

In an Urgent Motion dated March 27, 1985, Bautista prayed that the sum of P296,384.43 covered by the PNB check be delivered to and kept by the Clerk of Court of the Regional Trial Court of Quezon City until such time as all incidents relative to the validity of the auction sale conducted by the sheriff were finally resolved.

On March 29, 1985, the sheriff wired the petitioners' counsel, notifying him of the deposit of the PNB check. The said counsel told the sheriff that he was rejecting the check because it was not legal tender and was not intended for payment but merely for deposit, as evidenced by Bautista's Urgent Motion of March 27, 1985.

On April 25, 1985, the petitioners requested the sheriff to issue a final deed of sale over the two lots and deliver the same to them on the ground that no valid redemption had been effected within the 12-month period from the registration of the sale. When the request was not granted, the petitioners filed with the respondent court a petition for mandamus.

According to the petitioners, NSC and Bautista failed to comply with the provisions of the Rules of Court in exercising their right of redemption. They invoked Article 1249 of the Civil Code, which provides that "the payment of debts in money shall be made in the currency stipulated, and if it is not possible to deliver such currency, then in the currency which is legal tender in the Philippines." They argued that this provision was applicable to redemption under Rule 39, Section 30, of the Rules of Court.

They also contended that the check issued by NSC, not being legal tender, could not be considered payment of the redemption price. Moreover, the tender of the redemption price was not valid as the same was conditional under Bautista's letter to the sheriff dated March 21, 1985. And even granting the validity of the said tender, it was nevertheless withdrawn when on March 27, 1985, Bautista filed his Urgent Motion to deposit the redemption money with the clerk of court.

The petitioners added that since there was no delivery to the creditor of the redemption price, there was no payment within the meaning of Article 1233 of the Civil Code. This provides that "a debt shall not be understood to have been paid, unless the thing or service in which the obligation consists has been completely delivered or rendered, as the case may be."

On November 10, 1986, the respondent court denied mandamus but granted injunction to restrain the registration of the certificate of redemption in favor of NSC and Bautista.

The respondent court rejected the petitioners' contention that Article 1249 was applicable in cases of redemption and reiterated the settled jurisprudence that "the right of redemption is not an obligation nor is it intended to discharge a pre-existing debt,[3] the right of redemption being in fact a privilege."

Citing *Javellana v. Mirasol*,^[4] the respondent court said that "the redemption was not rendered invalid by the fact that the officer accepted a check for the amount necessary to make the redemption instead of requiring payment in money." On the failure to deliver the redemption price to the petitioners directly, it said that the payment of the redemption money to the sheriff was legally sanctioned under Rule 39, Section 31, of the Rules of Court which provides that such payment "may be made to the purchaser x x x or x x x to the officer who made the sale."

The respondent court considered NSC's redemption as absolute and unconditional in view of its refusal to join Bautista in contesting the validity of the sale and in withdrawing the redemption. But Bautista's reservation in his letter of March 21, 1985, and his repudiation of the redemption made by NSC, made his own redemption

inofficious.

The respondent court observed, however, that the validity of redemption was dependent on the validity of the certificate of sale, which had to be resolved by the trial court.

On November 22, 1986, the petitioners moved for partial reconsideration. While their motion was pending, NSC filed a Manifestation dated March 18, 1987, informing the respondent court that the certificate of redemption had already been registered and TCT No. T-27154 had been issued in its favor on September 12, 1985.

On May 8, 1987, the respondent court denied the petitioners' motion for reconsideration. Hence, this appeal by certiorari on the grounds that the Court of Appeals erred in holding inter alia that Article 1249 of the New Civil Code does not apply to the payment of the redemption price of property sold at public auction and that the redemption of NSC is unconditional and without reservation.

The central issue in this case is whether or not redemption had been validly effected by the private respondents.

It is contended by the private respondents that Article 1249 of the New Civil Code is inapplicable as it "deals with a mode of extinction of debts"[5] while the "right to redeem is not an obligation, nor is it intended to discharge a pre-existing debt." [6]

They rely on *Javellana*, where we held that "a redemption of property sold under execution is not rendered invalid by reason of the fact that the payment to the sheriff for the purpose of redemption is effected by means of a check for the amount due."

The petitioners, on the other hand, invoke *Belisario v. Natividad*, [7] where it was held that "even if the check had been good, the defendant was not legally bound to accept it because such a check does not satisfy the requirements of a legal tender." They also cite *Villanueva v. Santos*, [8] *Legarda v. Mialhe*, [9] *New Pacific Timber and Supply Co., Inc. v. Seneris*, [10] and *Philippine Air Lines V. Court of Appeals*, [11] all of which, they claim, have overruled *Javellana*.

The Court does not agree with these conclusions. It would appear from a study of the jurisprudence invoked by the parties that the case applicable to the present controversy is *Javellana v. Mirasol*.

The cases cited by the petitioners do not involve redemption by check. The check tendered in *Belisario*, was in the exercise of an option to repurchase; in *Villanueva* in connection with a pacto de retro; in *Legarda* and *New Pacific* as payment of a mortgage indebtedness; and in the *PAL* case in satisfaction of a judgment.

Tolentino v. Court of Appeals, [12] besides citing *Javellana*, stresses the liberality of the courts in redemption cases. On the issue of the applicability of Article 1249 of the Civil Code and the validity of the tender of payment through a crossed check, this Court held:

x x x the aforequoted Article should not be applied in the instant case x x x.

To start with, the Tolentinos are not indebted to BPI their mortgage indebtedness having been extinguished with the foreclosure and sale of the mortgaged properties. After said foreclosure and sale, what remains is the right vested by law in favor of the Tolentinos to redeem the properties within the prescribed period. This right of redemption is an absolute privilege, the exercise of which is entirely dependent upon the will and discretion of the redemptioners. There is, thus, no legal obligation to exercise the right of redemption. Said right, can in no sense, be considered an obligation, for the Tolentinos are under no compulsion to exercise the same. Should they choose not to exercise it, nobody can compel them to do so nor will such choice give rise to a cause of action in favor of the purchaser at the auction sale. In fact, the relationship between said purchaser and the redemptioners is not even that of creditor and debtor.

On the other hand, if the redemptioners choose to exercise their right of redemption, it is the policy of the law to aid rather than to defeat the right of redemption. It stands to reason therefore, that redemptions should be looked upon with favor and where no injury is to follow, a liberal construction will be given to our redemption laws as well as to the exercise of the right of redemption. In the instant case, the ends of justice would be better served by affording the Tolentinos the opportunity to redeem the properties in question other than the homestead land, in line with the policy aforesaid x x x.

x x x x x x x x

x x x And the redemption is not rendered invalid by the fact that the said officer accepted a check for the amount necessary to make the redemption instead of requiring payment in money. It goes without saying that if he had seen fit to do so, the officer could have required payment to be made in lawful money, and he undoubtedly, in accepting a check, placed himself in a position where he could be liable to the purchaser at the public auction if any damage had been suffered by the latter as a result of the medium in which payment was made. But this cannot affect the validity of the payment. The check as a medium of payment in commercial transactions is too firmly established by usage to permit of any doubt upon this point at the present day. No importance may thus be attached to the circumstance that a stop-payment order was issued against said check the day following the deposit, for the same will not militate against the right of the Tolentinos to redeem, in the same manner that a withdrawal of the redemption money being deposited cannot be deemed to have forfeited the right to redeem, such redemption being optional and not compulsory. Withal, it is not clearly shown that said stop-payment order was made in bad faith. x x x

Although the private respondents in the case at bar did not file a redemption case against petitioners, it should be noted that private respondents NSC filed an Urgent Motion for Redemption dated February 11, 1985, and Bautista filed an Urgent Motion (To Deposit Redemption Money with Quezon City Clerk of Court) dated March 27, 1985. The motions were well within the redemption period.

In the United States, it has also been held and recognized that a payment by check or draft or bank bills or currency which is not legal tender is affective if the officer accepts such payment.[13] If in good faith the redemptioner pays, and the officer receives before the expiration of the time of redemption, an ordinary banker's check, the payment is regarded as sufficient.[14]

We find nothing wrong with Bautista's letter of March 21, 1985, where he made his redemption of the lot covered by TCT No.T-7625 subject to the reservation that "the same shall not be taken to mean my acknowledgment of the validity of the aforesaid writ of execution and sale x x x nor x x x as waiver on my part of any of the legal rights and remedies available to be under the circumstances." Had he not done so, estoppel might have operated against him. As we held in *Cometa v. IAC*,[15] "redemption is an implied admission of the regularity of the sale and would estop the petitioner from later impugning its validity on that ground." In questioning the writ of execution and sale and at the same time redeeming his property, Bautista was exercising alternative reliefs.

In *Javellana*, it was contended that the position of Luis Mirasol as a litigant in the prior appeal was inconsistent with his position as litigant in the redemption case and that he was estopped from now claiming as redemptioner the property which he had earlier claimed as owner. The Court held:

We are unable to see any force in the suggestions; as the positions occupied by this litigant are based upon alternative rather than upon opposed pretension. No one can question the right of a litigant to claim property as owner and to seek in the same proceeding alternative relief founded upon some secondary right. The right of redemption, for instance, is always considered compatible with ownership, and one who fails to obtain relief in the sense of absolute owner may successfully assert the other right. That which a litigant may do in any one case can of course be done in two different proceedings.

We reiterated that same view in *Ybañez v. CA*,^[16] thus:

Nor are the causes of action in the two (2) cases inconsistent with one another. As aptly pointed out by the respondent Appellate Court, there are issues in the Reconveyance Case that are set apart from the question of the validity of the auction sale, which is the subject of inquiry in the Annulment Suit. The latter case alleged irregularities in the conduct of the public auction sale. x x x

On the other hand, the issues raised in the Reconveyance Case call for a separate determination of such questions as whether respondent Go had, in fact delivered the redemption money to one of the petitioners; whether or not such delivery, if there had been one, had been made on time, and whether or not another money judgment against respondent Go had already been satisfied. In effect, the Reconveyance Case presented an alternative cause of action

.Although Bautista repudiated his redemption in his letter of March 25, 1985, to the sheriff on the ground that the auction sale was illegal, he backtracked in his Urgent Motion dated March 27, 1985, wherein he prayed that —

"x x x Sheriff Basilisa Campano of Iligan City be directed and ordered to immediately transfer and deliver, upon his encashment of PNB Check No. A-313551, the aforesaid sum of P296,384.43 deposited to her by the National Steel Corporation, through the authority of defendant, to the Clerk of Court, Regional Trial Court of Quezon City, to remain thereat until the validity of the questioned orders and/or decision in the above entitled case are resolved with finality or until further orders from the Honorable Court.

It is further prayed that the aforesaid amount be considered as sufficient redemption price if it shall finally be adjudged that plaintiffs are entitled thereto; otherwise, the said amount shall be returned and delivered back to herein defendant.

x x x x x x x x

Finally, the petitioners pray that we rule on the validity of the certificate of sale assailed by Bautista on the ground that it covers more than one lot and does not indicate the price paid for each parcel. They contend that Bautista has not shown that the parcels of land would have been sold for a better price had they been offered separately and that he had not asked that they be sold by parcels. They also maintain that since we have the main jurisdiction to determine the validity of the redemption, we likewise have ancillary jurisdiction to rule on the validity of the sale.

The facts surrounding the sale are not before us. In response to a query from this Court regarding the status of CC No. Q22367, the clerk of the trial court replied that the records of that court were totally burned during the fire which razed the Quezon City Hall on June 11, 1988. Apart from the circumstance that we are not a trier of facts, the facts we are asked to try are not at hand.

We are not, by this decision, sanctioning the use of a check for the payment of obligations over the objection of the creditor. What we are saying is that a check may be used for the exercise of the right of redemption, the same being a right and not an obligation. The tender of a check is sufficient to compel redemption but is not in itself a payment that relieves the redemptioner from his liability to pay the redemption price. In other words, while we hold that the private respondents properly exercised their right of redemption, they remain liable, of course, for the payment of the redemption price.

WHEREFORE, the appealed decision is **AFFIRMED**, with the modification that the redemption made by Angel L. Bautista was also unconditional like that of the National Steel Corporation. Accordingly, the petition is **DENIED**, with costs against the petitioners.

SO ORDERED.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Penned by Tensuan, J., with Chua and Kapunan, JJ., concurring.

[2] Presided by Judge Rodolfo A. Ortiz.

[3] Rollo, p. 40 citing Paez v. Magno, 83 Phil. 403; Golez v. Camara, 101 Phil. 363.

[4] 40 Phil. 761.

[5] Golez v. Camara, supra.

[6] Rollo, p. 67 citing Paez v. Magno, supra; Golez v. Camara, supra; Aricayos v. Arenas, CA-G.R. No. 35865-R, June 3, 1971.

[7] 60 Phil. 156.

[8] 67 Phil. 648.

[9] 88 Phil. 637.

[10] 101 SCRA 686.

[11] 181 SCRA 557.

[12] 106 SCRA 513.

[13] 33 C.J.S. Executions 258.

[14] Ibid.

[15] 151 SCRA 563.

[16] 180 SCRA 464.

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