

ARNEL SY, PETITIONER, VS. HONORABLE COURT OF APPEALS, STATE INVESTMENT HOUSE, INC. AND THE REGISTER OF DEEDS OF RIZAL, RESPONDENTS.

G.R. No. 83139. April 12, 1989

Ponente: CORTES, J.

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CORTES, J.:

For a resolution of the issues raised in the instant petition involving the amount required to redeem the subject foreclosed property, the Court must first determine what law to apply. Is it Section 30, Rule 39 of the Revised Rules of Court in relation to Act No. 3135 as amended, or Section 78 of Rep. Act No. 337 (General Banking Act) as amended by P.D. No. 1828?

The facts of the case are as follows:

On March 2, 1979, Carlos Coquingo executed in favor of private respondent State Investment House, Inc. (hereinafter referred to as SIHI) a real estate mortgage over a 952 square-meter parcel of land in San Juan, Metro-Manila, together with all the improvements thereon, covered by TCT No. 2782 issued in his name, as security for the payment of a loan in the amount of P1,000,000.00. For failure of Carlos Coquingo to pay his outstanding balance of P1,126,220.56 computed as of October 19, 1982, [Record, p. 217-E] the mortgaged property was extrajudicially foreclosed by SIHI and was sold at public auction on February 10, 1983 for P760,000.00 to SIHI as the only bidder. The certificate of sale in favor of SIHI was registered with the Registry of Deeds of Pasig on February 28, 1983.

On May 22, 1983, SIHI filed before the Regional Trial Court (RTC) of Manila an action against Carlos Coquingo for the collection of the sum of P612,031.84, representing the deficiency of his indebtedness as of February 10, 1983.

In the meantime, petitioner acquired by virtue of a deed of assignment Carlos Coquingo's right of redemption for and in consideration of P500,000.00. Before the expiration of the one-year redemption period, petitioner offered to redeem the foreclosed property from SIHI by tendering to the latter two (2) manager's checks issued by SOLIDBANK, one for P760,000.00 representing the purchase price, and another for P91,200.00 representing interest at the rate of 1% per month for 12 months, totaling P851,200.00. SIHI rejected this offer.

Thus, on February 20, 1984, petitioner filed an action for consignation of the aforesaid amount with the RTC, docketed as Civil Case No. 84-22839, to compel SIHI to accept the P851,200.00 as payment of the redemption price for the foreclosed property, to order SIHI to surrender the title over the property and to issue a certificate of redemption in favor of petitioner.

On February 27, 1984, a day before the expiration of the redemption period, petitioner decided to redeem the foreclosed property directly from the Ex-Officio Regional Sheriff of Rizal, who accepted from him the amount of P851,200.00 as redemption price and P4,269.00 as percentage fee of collection, and issued to him the

corresponding certificate of redemption.

On March 30, 1984, SIHI filed a motion to dismiss Civil Case No. 84-22839 on the ground of lack of cause of action, alleging that the amount sought to be consigned was insufficient for purposes of redemption pursuant to Section 78 of Rep. Act No. 337, otherwise known as the General Banking Act.

In an order dated April 24, 1984, the RTC dismissed petitioner's action on the ground, among others, that there being no valid tender of payment, there was no valid consignment. No appeal was interposed by petitioner from this order.

After the dismissal of the aforementioned action, SIHI consolidated its ownership over the foreclosed property, and caused the cancellation of TCT No. 2782 and the issuance of TCT No. 44775 covering the same property in its name.

After learning of this development, petitioner instituted another action in the Regional Trial Court on June 11, 1984, this time a complaint for annulment and cancellation of title, with damages, against SIHI and the Register of Deeds for the Province of Rizal, docketed as Civil Case No. 51169.

During the pendency of the action, SIHI sold the subject property to spouses Domingo Lim and Lim Siu Keng. Defendant Register of Deeds, thereafter, cancelled TCT No. 44775 and issued TCT No. 46409 in the name of the spouses.

On July 7, 1986, the court a quo dismissed petitioner's complaint holding that it stated no cause of action because petitioner failed to effect a valid redemption as required under Section 78 of the General Banking Act, as amended by P.D. No. 1828. The court accordingly ordered petitioner to pay SIHI the following sums of money: P10,000.00 as temperate damages; P20,000.00 as exemplary damages on the finding that petitioner had instituted the case in violation of the res judicata rule; and P20,000.00 as attorney's fees [CA Decision, p. 4; Rollo, p. 32.] Petitioner's motion for reconsideration was subsequently denied.

Petitioner then appealed to respondent appellate court, raising as errors: (1) the application of Section 78 of the General Banking Act, as amended, instead of Act No. 3135, in relation to Section 30, Rule 39 of the Revised Rules of Court; (2) the holding that the dismissal of Civil Case No. 84-22839 (consignation case) from which petitioner failed to appeal and wherein the court made a finding that petitioner made no valid tender of payment of the redemption price, had the effect of res judicata on the case at hand; (3) the finding that SIHI committed no actionable wrong in conveying the subject property to spouses Domingo Lim and Lim Siu Keng; and, (4) the award of damages assessed against petitioner [CA Decision, p. 5; Rollo, p. 33.]

In its decision promulgated on April 28, 1988, respondent appellate court affirmed the trial court's judgment with the modification that the award for temperate and exemplary damages assessed against petitioner was set aside for lack of legal basis [CA Decision, p. 11; Rollo, p. 39.]

Not satisfied with the above decision, petitioner filed the instant petition for review on certiorari, raising basically the same errors he had raised in the appellate court.

The issues raised in this petition may be reduced into four, to wit:

- I. Whether Act No. 3135, as amended, in relation to Section 30, Rule 39 of the Revised Rules of Court, or Section 78 of Rep. Act No. 337 (General Banking Act), as amended by P.D. No. 1828, is the applicable law in determining the redemption price;
- II. Whether or not the dismissal of Civil Case No. 84-22839 (consignation case) had the effect of res judicata with respect to Civil Case No. 51169;

III. Whether or not the Register of Deeds for the province of Rizal may be held liable for damages for cancelling TCT No. 2782 and issuing TCT No. 44775 in favor of SIHI; and,

IV. Whether or not the award of attorney's fees and expenses of litigation assessed against petitioner is proper.

As regards the first issue, petitioner insists that the present case is governed by Act No. 3135, as amended, in relation to Section 30, Rule 39 of the Revised Rules of Court which provides in part:

SEC. 30. Time and manner of, and amounts payable on, successive redemptions. Notice to be given and filed. - The judgment debtor, or redemptioner, may redeem the property from the purchaser, at any time within twelve months after the sale on paying the purchaser the amount of his purchase, with one percentum per month interest thereon in addition, up to the time of redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after purchase, and interest on such last-named amount at the same rate . . . [Underscoring supplied.]

Thus, petitioner contends that a valid redemption was made by him as assignee of the mortgagor's right of redemption when he tendered and paid to the Sheriff of Rizal the amount of P851,000.00 representing the purchase price plus interest computed at the rate of 1% per month for a period of twelve months. This was the same amount allegedly tendered to, and refused acceptance by, SIHI. In support of his contention, petitioner invokes the case of *Philippine National Bank v. The Honorable Court of Appeals and Divina Alim* [G.R. No. 60208, December 5, 1985, 140 SCRA 360.]

On the other hand, respondent appellate court, citing the case of *Ponce de Leon v. Rehabilitation Finance Corporation* [G.R. No. L-24571, December 18, 1970, 36 SCRA 289], applied Section 78 of the General Banking Act, as amended by P.D. No. 1828, and consequently held that no valid redemption was effected by petitioner because the amount tendered to SIHI and thereafter paid to the sheriff was insufficient, it being less than the amount due under the real estate mortgage contract of Carlos Coquingo, or the latter's outstanding balance, with interest as specified in the mortgage contract plus expenses incurred by SIHI by reason of the foreclosure and sale of the subject property.

The Court finds that respondent appellate court committed no reversible error, having acted in accordance with the law and jurisprudence.

Section 78 of the General Banking Act, as amended by P.D. No. 1828, states that:

. . . In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real estate which is security for any loan granted before the passage of this Act or under the provisions of this Act, the mortgagor or debtor whose real property has been sold at public auction, judicially or extrajudicially, for the full or partial payment of an obligation to any bank, banking or credit institution, within the purview of this Act shall have the right, within one year after the sale of the real estate as a result of the foreclosure of the respective mortgage, to redeem the property by paying the amount fixed by the court in the order of execution, or the amount due under the mortgage deed, as the case may be, with interest thereon at the rate specified in the mortgage and all the costs, and judicial and other expenses incurred by the bank or institution concerned by reason of the execution and sale and as a result of the custody of said property less the income received from the property. [Underscoring supplied.]

It must be emphasized that the above section is applicable not only to "banks and banking institutions", but also to "credit institutions". And, as certified by the Central Bank*, SIHI is a credit institution, i.e. financial intermediary engaged in quasi-banking functions, within the purview of Section 78, it being an entity authorized to engage in the lending of funds or purchasing of receivables or other obligations with funds obtained from the public as provided in the General Banking Act under Section 2-A(a)**; and, to lend, invest or place funds deposited with

them, acquired by them or otherwise coursed through them, either for their own account or for the account of others under Section 2-D(c)*** [Record, p. 246.]

Moreover, petitioner by virtue of the deed of assignment of Carlos Coquingo's right of redemption must be deemed subrogated to the rights and obligations of his assignor, and bound by exactly the same conditions, relative to the redemption of the subject property that bound the latter as debtor and mortgagor [Gorospe v. Santos, G.R. No. L-30079, January 30, 1976, 69 SCRA 191.] Had Carlos Coquingo attempted to redeem the subject foreclosed property, he would have had to pay "the amount due under the mortgage deed . . . with interest thereon at the rate specified in the mortgage and all costs . . . and other expenses incurred . . . by reason of the execution [or foreclosure] and sale and as a result of the custody of said property less the income received from the property . . . " pursuant to Section 78 of the General Banking Act in order to effect a valid redemption. Since petitioner merely stepped into the shoes of Carlos Coquingo, his assignor, petitioner should have tendered and paid that same amount in order to redeem the property.

Contrary to petitioner's claim, the Court's decision in Ponce de Leon v. Rehabilitation Finance Corporation, supra, is applicable. In that case, the Court had occasion to state that the General Banking Act partakes of the nature of an amendment to Act No. 3135 insofar as the redemption price is concerned, when the mortgagee is a bank or banking or credit institution, Section 6 of Act No. 3135 being, in this respect, inconsistent with Section 78 of the General Banking Act. Although the foreclosure and sale of the subject property was done by SIHI pursuant to Act No. 3135, as amended (whereby entities like SIHI are authorized to extrajudicially foreclose and sell mortgaged properties only under a special power inserted in or annexed to the real estate mortgage contract, and interested parties, like petitioner herein, are given one year from the date of sale within which to redeem the foreclosed properties), Section 78 of the General Banking Act, as amended, provides the amount at which the subject property is redeemable from SIHI, which is, in this case, the amount due under the mortgage deed, or the outstanding obligation of Carlos Coquingo, plus interest and expenses.

The decision in the 1985 case of Philippine National Bank v. The Honorable Court of Appeals, supra, invoked by petitioner is not determinative of the issues in the instant petition because that case is applicable only to extrajudicial foreclosures by the PNB effected pursuant to a mortgage contract entered into prior to the enactment in 1975 of the Revised Charter of the PNB, P.D. No. 694 (which contained provisions on redemption), and deals specifically with the amount of interest to be included in the computation of the redemption price.

Thus, inasmuch as petitioner failed to tender and pay the required amount for the redemption of the subject property pursuant to Section 78 of the General Banking Act, as amended, no valid redemption was effected by him. Consequently, there was no legal obstacle to the consolidation of title by SIHI.

Considering that the Court has made the foregoing categorical finding that petitioner failed to effect a valid redemption of the subject property, it is deemed unnecessary to pass upon the merits of the second issue presented in the instant petition.

As regards the third issue, suffice it to say that the respondent Register of Deeds incurred no liability when he cancelled TCT No. 2782 and issued in lieu thereof TCT No. 44775 in the name of SIHI, the former having acted in fulfillment of his official functions and in accordance with law.

With regard to the fourth issue, petitioner contends that since respondent appellate court had set aside the award of temperate and exemplary damages on the finding that petitioner had acted in good faith in filing the present action, it should have also deleted the award of attorney's fees and expenses of litigation assessed against him for lack of legal basis.

This contention is meritorious.

A perusal of Article 2208 of the New Civil Code will reveal that the award of attorney's fees as a form of damages is the exception rather than the general rule for it is predicated upon the existence of exceptional circumstances, such as a "clearly unfounded civil action or proceeding" or evident bad faith on the plaintiff's part in instituting his action [Tan Ti v. Alvear, 26 Phil. 566 (1914); Buan v. Camaganacan, G.R. No. L-21569, February 28, 1966, 16 SCRA 321; Philippine National Bank v. Court of Appeals, G.R. No. L-45770, March 20, 1988, 159 SCRA 433.]

It cannot be said that the present action instituted by petitioner was clearly unfounded. Although the theory upon which petitioner's complaint was based is untenable, he had raised legitimate issues on the application of Section 78 of the General Banking Act to credit institutions like SIHI, and the import of the decisions in the cases of Ponce de Leon v. Rehabilitation Finance Corporation and Philippine National Bank v. The Honorable Court of Appeals. Neither was it established that petitioner had acted in bad faith in the filing of his action against SIHI notwithstanding the dismissal of his complaint in Civil Case No. 84-22839 (consignation case). The Court agrees with the holding of the respondent appellate court that the filing of the present action by petitioner was merely

. . . a misapprehension of a legal remedy as would normally be taken within the ambit of permissible legal procedure. This is a scene happening daily in our courts where the opposing parties would avail of every conceivable rule in the statute books to ventilate their claim or defenses. [Petitioner's] persistence to pay the redemption price is an act which the court does not consider condemnable as to make [him] liable for temperate and exemplary damages. We are inclined to presume that [he] acted in good faith [CA Decision, p. 10; Rollo, P. 38.]

WHEREFORE, the decision of respondent Court of Appeals in CA-G.R. CV No. 13387 promulgated on April 28, 1988 is hereby **AFFIRMED** with the modification that the award of attorney's fees and expenses of litigation is set aside.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., and Bidin, JJ., concur.
Feliciano, J., on leave.

* Central Bank Certification dated December 19, 1985 issued by Deputy Governor Carlota Valenzuela.

** SEC. 2-A (a) Entities regularly engaged in the lending of funds or purchasing of receivables or other obligations with funds obtained from the public through the issuance, endorsement, or acceptance of debt instruments of any kind for their own account, or through the issuance of certificates of assignment or similar instruments with recourse, trust certificates, or of repurchase agreements, whether any of these means of obtaining funds from the public is done on a regular basis or only occasionally.

*** SEC. 2-D (c) "Financial intermediaries" shall mean persons or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others.

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