

**ANTONIO TAMBUNTING AND AURORA TAMBUNTING, PETITIONERS,
VS. REHABILITATION FINANCE CORPORATION (NOW
DEVELOPMENT BANK OF THE PHILIPPINES), HEIRS OF JOSE
ESCUETA AND ELEUTERIA ESCU...**

G.R. Nos. 54224-25. August 16, 1989

Ponente: NARVASA, J.

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NARVASA, J.:

A contract is the law between the parties and, absent any showing that its provisions are wholly or in part contrary to law, morals, good customs, public order, or public policy, will be enforced to the letter by the Courts. Application of this fundamental principle is all that is required to resolve the controversy at bar.¹

The root of the dispute is traceable to loans obtained by the Spouses Jose and Eleuteria Escueta from the Rehabilitation Finance Corporation (RFC) in the aggregate sum of P59,000.00. The loans were secured by a mortgage constituted by said spouses over land (and improvements thereon) owned by them, covered by Transfer Certificates of Title Numbered 493 (39774) and 494 (39775) of the Registry of Deeds of Pasay City.¹

Later, and with the consent of the RFC, the Escuetas created a second mortgage over the same property as security for a loan in the amount of P16,000.00 obtained by them from the Spouses Antonio and Aurora Tambunting.² Both first and second mortgages were recorded in the Registry of Deeds of Pasay City.³

The Escuetas defaulted in the payment of both loans. The Tambuntings consequently instituted an action of foreclosure of their second mortgage in the Court of First Instance of Pasay City.⁴ Some three months later, the RFC commenced proceedings for the extra-judicial foreclosure of its first mortgage, which resulted in the sale at public auction of the mortgaged property to the highest bidder, the RFC itself, subject to the right of redemption of the mortgagors, the Escuetas.⁵ The RFC then applied for and obtained a writ of possession from the proper Court and in virtue thereof, took possession of the foreclosed property.⁶

About eight (8) months after the foreclosure sale, the Tambuntings, as second mortgagees, offered to redeem the property.⁷ The RFC agreed, subject to the Escuetas' right of redemption as former owners thereof.⁸ Their agreement was reduced to writing, entitled "Deed of Conditional Sale." Under it, the RFC sold the property in question to the Tambuntings for P74,643.98, 20% of which (P14,928.89) was given as down payment, and the balance was amortized over a period of ten (10) years.⁹ The deed also contained the following stipulation,¹⁰ among others:

This contract may be revoked within one (1) year from September 16, 1955 at the option of the vendor should the former owner exercise his right to redeem the property herein sold. In case the property is redeemed or repurchased within said period by the former owner or his successor-in-interest, the vendor shall refund to the vendees any and all amounts that the vendees may have paid to the vendor under the conditional sale with interest as provided for by law, rendering, thereby this instrument automatically null and void and without effect.

The Tambuntings took possession, and commenced to collect the rentals from the tenants thereof after notifying them of the deed of conditional sale in their favor.¹ In this connection, the deed also provided that in the event of redemption by the former owner, "all rentals collected will be deducted from the redemption price."²

About a month later, the Escuetas learned of the sale in favor of the Tambuntings. Three (3) days before the expiry of the stipulated redemption period, the Escuetas, having been unable to raise the amount to effect redemption, assigned their right to repurchase to the spouses Demetrio Hernandez and Candelaria Paguio in consideration of the sum of P15,000.00.³ On the day following, Hernandez went to the RFC and exercised the right of redemption assigned to him by making a deposit of P19,088.89, and formally undertaking to pay the balance of the repurchase price in fixed monthly installments over a period of ten (10) years at 6% interest per annum, these being the terms specified by the RFC for redemption, set out in its Chairman's letter sent to the Escuetas three months after the foreclosure.⁴

The RFC then notified the Tambuntings that their contract of conditional sale was deemed revoked in view of the redemption by Hernandez, the Escuetas' successor-in-interest.⁵

On the same day the Tambuntings wrote to the RFC, "vehemently" protesting the acceptance by the RFC of the redemption by the Hernandezes "as not in accordance with law."⁶ And some three weeks afterwards, they instituted in the Court of First Instance of Pasay City, an action against the RFC, the Escueta Spouses, and the Hernandez Spouses, for (1) the nullification of (a) the deed of assignment by the Escuetas in favor of the Hernandez Spouses, (b) the latter's redemption of the property in question, and (c) the RFC's revocation of its deed of conditional sale with the Tambuntings; (2) the declaration of the validity of said deed of conditional sale in their favor; (3) the payment of damages by the defendants; and (4) the payment by the Escuetas, particularly, of rentals in arrears for their use and occupation of one of the apartments standing on the mortgaged property. This action, docketed as Case No. 1686-P, was the Tambuntings' second involving the same property, their first, Case No. 1565-P, being one for the foreclosure of their second mortgage.¹

The Tambuntings also amended their complaint in the first action.² They alleged that –

- 1) the deed of assignment of the Escuetas' right of redemption in favor of the Hernandezes was null and void because "fictitious or simulated," and violative of the Deed of Second Mortgage of which the assignors and the assignees had notice;
- 2) the redemption sought to be exercised by the Hernandezes was invalid because (a) the amount deposited (down payment of P19,088.89) was not the full redemption price (P55,000.00) exclusive of costs, insurance premiums, interest, taxes, attorney's fees and liquidated damages, and (b) was not accompanied by an offer to pay the Tambuntings' mortgage credit; and
- 3) if the verdict in Civil Case No. 1686-P uphold the redemption by the Hernandezes and the RFC's right to revoke its contract of conditional sale with the Tambuntings, then the latter's second mortgage should be enforced on the property in question.

The two cases were consolidated,³ and decided jointly.⁴ The Trial Court's judgment went against the Tambuntings, and disposed of the cases as follows:

- 1) the preliminary injunction earlier issued, restraining the defendants from taking possession of the property in question was lifted and set aside;
- 2) the Deed of Conditional Sale between the RFC (which had in the meantime become the Development Bank of the Philippines [DBP]) and the Spouses Tambuntings was declared null and void;
- 3) the Deed of Assignment of the Escuetas' right of redemption in favor of the Hernandezes was pronounced to

be valid and subsisting; and

4) the Tambuntings were ordered to refund to the Escuetas and Hernandezes "whatever excess rentals there may be from plaintiffs' (Tambuntings') collection on the mortgaged properties after deducting therefrom the down payment of P14,928.80 and the monthly amortizations paid by said plaintiffs to defendant RFC under said Deed of Conditional Sale, and ** to pay the costs."

The Tambuntings appealed to the Court of Appeals, but there they fared no better. That Court affirmed the Trial Court's decision in toto¹ and subsequently denied the Tambuntings motion for reconsideration.² Hence, their present recourse to this Court.

The Tambuntings' submissions in this Court are substantially the same as those they laid before both the Trial Court and the Court of Appeals, to wit:

- 1) the Escuetas' deed of assignment in favor of the Hernandez Spouses violated the terms of the Tambuntings' mortgage' and was fictitious, to boot;
- 2) even if the assignment were valid, there had been no valid exercise of the right of redemption thereby assigned; and
- 3) the assignment was "designed to deprive petitioners (Tambuntings) of the credit they extended; so that petitioners are also entitled to the damages prayed for under the(ir) complaint."

The Tambuntings' appeal must be rejected and dismissed for lack of merit.

In the first place, the matter of whether or not the assignment was fictitious is an issue of fact and its resolution by the Court of Appeals is, by firmly established and long observed principle, final and conclusive on this Court. Moreover, the Escuetas right to redeem the property within one (1) year from September 16, 1955 was never in any doubt. As much is explicit in the Deed of Conditional Sale already referred to which documented the Tambuntings' redemption of the property as second mortgagees and provided for its own automatic invalidation upon the exercise by the Escuetas (or their successor-in-interest) of their own right of redemption within said period.

Now, the theory of a fictitious transfer of the Escuetas' right of redemption is sustainable only on the premise that such transfer somehow enlarged the scope of the right or extended the period within which it might be exercised. It did neither, however. Its only effect was to put the transferee in the shoes of the Escuetas, with exactly the same obligations to fulfill as redemptioner and precisely the same period of time within which to do so. As far as the Escuetas were concerned, there was no advantage to be gained, no benefit to be derived, no premium in simulating a transfer which altered none of the conditions for a valid redemption, whether exercised by themselves or by a transferee.

In short, the Escuetas had nothing to gain by going behind the scenes, as it were, and making redemption through a dummy. And even if it be assumed that they in fact did so, that the redemption had been made for them and on their behalf by the Hernandezes to whom; they had "fictitiously" assigned their right of redemption, this would be utterly inconsequential, not only because as already pointed out, there is no question about their (the Escuetas') being entitled to redeem, but also because the redemption was made strictly according to the terms -- as to down payment and other conditions -- laid down by the RFC itself. Since, by the way, these terms were precisely the same as those under which the Tambuntings were initially allowed to redeem, it is illogical and improper, to say the least, for the latter now to impugn them.

Also untenable is the contention that the deed of assignment executed by the Escuetas in favor of the Hernandez

Spouses was violative of the Tambuntings' second mortgage and therefore, inefficacious. A mortgagor, by encumbering his property, does not ordinarily lose the right to sell the same or create another mortgage over it, although of course obliged, when exercising said right, to preserve and maintain the superiority of the prior mortgagee's rights. Indeed, recognition of the propriety of subsequent encumbrances is implicit in the grant of the right of redemption by Section 6 of ACT 3135, as amended, in cases of extra-judicial foreclosure of mortgage, to "any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold," in addition to the "debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor."¹

To be sure, the deed of second mortgage executed by the Escuetas in favor of Aurora Tambunting, married to Antonio L. Tambunting,² does contain a provision that "the property mortgaged shall not be * * the subject of any new or subsequent contracts or agreements, saving and excepting those having connection with the first mortgage with the RFC, without first securing the written permission and consent of the MORTGAGEE." But the provision can only be construed as directed against subsequent mortgages or encumbrances, not to an alienation of the immovable itself. For while covenants prohibiting the owner from constituting a later mortgage over property registered under the Torrens Act have been held to be legally permissible,¹ stipulations "forbidding the owner from alienating the immovable mortgaged," are expressly declared void by law.² It is clear then that the stipulation against "subsequent agreements" above mentioned had not been breached by the assignment by the Escuetas (to the Hernandezes) of their right of redemption in connection with the mortgage constituted in favor of the R.F.C. The assignment was not a subsequent mortgage or encumbrance, licitly comprehended by the prohibitory stipulation, but was actually a sale or conveyance of all their rights in the encumbered real property -- in truth, an alienation of the immovable -- which could not lawfully be forbidden. Moreover, since the subject of the assignment to the Hernandezes had "connection with the first mortgage with the R.F.C.," it did not fall within, but was explicitly excepted from, the prohibitory stipulation in question. Finally, it should not be forgotten that since the Tambuntings, in their own deed of conditional sale with the R.F.C., had accepted without demur the provision that said contract could be revoked within one (1) year from September 16, 1955 at the option of the RFC, as vendor, should the former owner (Escueta) exercise his right to redeem the property; and that the redemption of the property within said period by "the former owner or his successor-in-interest" would render their instrument of conditional sale "automatically null and void and without effect,"³ they cannot now assume a position inconsistent with said provision.

The execution by the Escuetas of a second mortgage over their property had the effect of subjecting the same property to the payment of two obligations. Both mortgage debts had to be paid by the mortgagors. If they failed to pay either or both, the unpaid mortgagee had the right to look to the property for satisfaction. Each mortgagee had the right to foreclose the mortgage; but obviously, the second mortgagee's right was inferior and subordinate to the first. Prior foreclosure by the second mortgagee could not affect the first mortgagee's rights at all; and if the first mortgagee foreclosed first, the second mortgagee had the right to redeem; i.e., pay the first mortgagee's credit, together with all due interests and charges and thus acquire the property mortgaged, subject to the right of redemption of the mortgagor.

On the other hand, the assignment by the Escuetas of their right of redemption (as regards both mortgage obligations) to the Hernandez Spouses operated as a transfer of the property itself, together with its recorded encumbrances. The acquisition by the Hernandezes of the Escuetas' rights over the property carried with it the assumption of the obligations burdening the property, as recorded in the Registry of Property, i.e., the mortgage debts in favor of the RFC (DBP) and the Tambuntings. The Hernandezes, by stepping into the Escuetas' shoes as assignees, had the obligation to pay the mortgage debts, otherwise, these debts would and could be enforced against the property subject of the assignment. Stated otherwise, the Hernandezes, by the assignment, obtained the

right to remove the burdens on the property subject thereof by paying the obligations thereby secured; that is to say, they had the right of redemption as regards the first mortgage, to be exercised within the time and in the manner prescribed by law and the mortgage deed; and as regards, the second mortgage, sought to be judicially foreclosed but yet unforeclosed, they had the so-called equity of redemption.¹

The Tambuntings were perfectly within their rights when they offered to redeem the property in question after it had been foreclosed and acquired at public auction by the RFC. And it was correct for the RFC, in accepting the Tambuntings' offer and acquiescing to their redemption of the property, to make such redemption subject to the Escuetas' own right of redemption, which was exigible against the RFC itself. Hence it was that the Deed of Conditional Sale executed consequent upon that redemption between the RFC and the Tambuntings, expressly provided in language that could not be made any plainer that – 2

This contract may be revoked within one (1) year from September 16, 1955 at the option of the vendor should the former owner exercise his right to redeem the property herein sold. In case the property is redeemed or repurchased within said period by the former owner or his successor-in-interest, the vendor shall refund to the vendees any and all amounts that the vendees may have paid to the vendor under the conditional sale with interest as provided for by law, rendering thereby this instrument automatically null and void and without effect.

The Court has been cited to no fact or argument invalidating this stipulation. The Tambuntings make no claim that their consent to the deed of conditional sale was in any manner flawed, or that the stipulation is contrary to law, morals, good customs, public order, or public policy.¹ The stipulation is a perfectly legitimate one. The Tambuntings are bound by it.

There is no dispute either about the fact that the redemption by the Hernandezes, as assignees of the mortgagor spouses, the Escuetas, was made within the time and in the manner laid down by law and the RFC itself. Their redemption was deemed by the RFC to have been properly exercised. The RFC therefore revoked its contract with the Tambuntings, as it was bound to pursuant to the explicit provision thereof above quoted -- indeed, that contract was, by its terms, rendered "automatically null and void and without effect" by the redemption -- and executed in the Hernandezes' favor a deed of conditional sale, substantially identical to that earlier signed in favor of the Tambuntings.

Nor can there be any question about the effects of that redemption by the Hernandezes as far as the Tambuntings are concerned. By reason thereof -

- 1) the Tambuntings acquired the right to a refund of "any and all amounts that ** (they) may have paid to the ** (RFC [DBP]) under the conditional sale with interest as provided for by law;" and
- 2) their credit against the Escuetas, and their right to foreclose the second mortgage given as security therefor --- and now still subject of Civil Case No. 1656-P of the CFI (now RTC) of Pasay City -- remained unaffected and intact, subject, of course, to the equity of redemption which the Hernandezes may exercise as assignees of the Escuetas.

WHEREFORE, the petition for review on certiorari is DENIED, and the judgment of the Court of Appeals thereby challenged is AFFIRMED, with the modification hereinafter decreed. The case is accordingly remanded to the Trial Court for a determination not only of (1) the "excess rentals there may be from plaintiffs' (the Tambuntings') collection on the mortgaged properties" to be refunded by said Tambuntings to the "defendants spouses Escueta and Hernandez" -- counted from the date that the Tambuntings were notified in writing by the RFC of the revocation of the deed of conditional sale executed in their favor -- "after deducting therefrom the down payment of P14,928.80 and the monthly amortizations paid by said plaintiffs to defendant RFC under said

Deed of Conditional Sale," as ordained by the judgment of the Trial Court, but also (2) the balance of the Tambuntings' mortgage credit against the Escuetas, together with all stipulated interests and charges, which the Hernandezes, as assignees of the Escuetas, are bound to pay to the Tambuntings within ninety (90) days from finality of that determination, in default of which the property shall be sold at public auction in accordance with the provisions of Rule 68 of the Rules of Court. Costs against petitioners.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

1 ART. 1306, Civil Code; *Peo. v. Pomar*, 46 Phil. 440; *Phoenix Assurance Co. Ltd. v. United States Lines*, 22 SCRA 674; *Baluyot v. Venegas*, 22 SCRA 442; *Lazo v. Republic Surety & Ins. Co., Inc.*, 31 SCRA 329; *Phil-American General Insurance v. Mutuc*, 61 SCRA 22, 23

1 The first loan was obtained on September 6, 1952, in the sum of P56,000.00 (Exh. A). The second was obtained on January 22, 1953, in the amount of P3,000.00 (Exh. A-1)

2 EXHS. C, C-1

3 Exhs. C-2, C-3, M, M-1

4 The action, commenced on June 27, 1955, was docketed as Civil Case No. 1565-P (Exh. Q)

5 Exhs. D, D-1 and D-2. Sec. 6, Act No. 3135 as amended by Act No. 4118, grants 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, the right to redeem the same within the term of one year from and after the date (of registration) of the sale.

6 Exhs. E, E-1

7 Exh. F

8 Exhs. F, F-1

9 Exh. G, dated April 14, 1956

10 Exh. 4-A-Escuetas; Exh. 4-A-1-Hernandez

1 Exhs. G, G-1 to G-32

2 Exh. 5-A

3 The deed of assignment is dated September 13, 1956, Exh. 1-A

4 The letter was dated December 15, 1955 (Exhs. 3, 3-A)

5 Rec. on App., p 78

6 Letter dated Sept. 17, 1956 (Exhs. J, J-1 to J-3_

1 SEE footnote 3, p. 2, supra

2 Rec. on App., pp. 74-79

3 Id., p. 352

4 Id., pp. 374 et seq.

1 Rollo, pp. 40 et seq. The appellate court's decision was promulgated on April 7, 1980.

2 Id., p. 68. The petition for review was filed on August 9, 1980. It was given due course, by Resolution of the then Second Division of December 10, 1980

1 See footnote 4, p. 2, supra. In judicial foreclosure, there is the same recognition: viz, Secs. 1 of Rule 68, which speaks of "persons having or claiming an interest in the premises subordinate in right to that of the holder of the mortgage;" Sec. 3 of the same Rule, which deals with "persons holding prior encumbrances upon the property or part thereof;" Sec. 4, same Rule, which adverts to "junior incumbrances."

2 Rollo, p. 70: Record on Appeal, pp. 10 et seq

1 Phil. Industrial Co. v. El Hogar Filipino, et al., 45 Phil. 336, 341-342; Bank of the Philippines v. Ty Camco Sobrino, 57 Phil. 801

2 ART. 2130, Civil Code

3 SEE footnote 9 at page 2, supra

1 SEE Limpin, et al., v. I.A.C., et al., G.R. No. 70987, Sept. 29, 1988, for distinction between right of redemption and equity of redemption.

2 SEE footnote 9, at p. 2, supra

1 ART. 1306, Civil Code

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