

FIRST DIVISION

[G.R. No. 195540, March 13, 2013]

GOLDENWAY MERCHANDISING CORPORATION, PETITIONER, VS. EQUITABLE PCI BANK, RESPONDENT.

D E C I S I O N

VILLARAMA, JR., J.:

Before the Court is a petition for review on certiorari which seeks to reverse and set aside the Decision^[1] dated November 19, 2010 and Resolution^[2] dated January 31, 2011 of the Court of Appeals (CA) in CA G.R. CV No. 91120. The CA affirmed the Decision^[3] dated January 8, 2007 of the Regional Trial Court (RTC) of Valenzuela City, Branch 171 dismissing the complaint in Civil Case No. 295-V-01.

The facts are undisputed.

On November 29, 1985, Goldenway Merchandising Corporation (petitioner) executed a Real Estate Mortgage in favor of Equitable PCI Bank (respondent) over its real properties situated in Valenzuela, Bulacan (now Valenzuela City) and covered by Transfer Certificate of Title (TCT) Nos. T-152630, T-151655 and T-214528 of the Registry of Deeds for the Province of Bulacan. The mortgage secured the Two Million Pesos (P2,000,000.00) loan granted by respondent to petitioner and was duly registered.^[4]

As petitioner failed to settle its loan obligation, respondent extrajudicially foreclosed the mortgage on December 13, 2000. During the public auction, the mortgaged properties were sold for P3,500,000.00 to respondent. Accordingly, a Certificate of Sale was issued to respondent on January 26, 2001. On February 16, 2001, the Certificate of Sale was registered and inscribed on TCT Nos. T-152630, T-151655 and T-214528.^[5]

In a letter dated March 8, 2001, petitioner's counsel offered to redeem the foreclosed properties by tendering a check in the amount of P3,500,000.00. On March 12, 2001, petitioner's counsel met with respondent's counsel reiterating petitioner's intention to exercise the right of redemption.^[6] However, petitioner was told that such redemption is no longer possible because the certificate of sale had already been registered. Petitioner also verified with the Registry of Deeds that title to the foreclosed properties had already been consolidated in favor of respondent and that new certificates of title were issued in the name of respondent on March 9, 2001.

On December 7, 2001, petitioner filed a complaint^[7] for specific performance and damages against the respondent, asserting that it is the one- year period of redemption under Act No. 3135 which should apply and not the shorter redemption

period provided in Republic Act (R.A.) No. 8791. Petitioner argued that applying Section 47 of R.A. 8791 to the real estate mortgage executed in 1985 would result in the impairment of obligation of contracts and violation of the equal protection clause under the Constitution. Additionally, petitioner faulted the respondent for allegedly failing to furnish it and the Office of the Clerk of Court, RTC of Valenzuela City with a Statement of Account as directed in the Certificate of Sale, due to which petitioner was not apprised of the assessment and fees incurred by respondent, thus depriving petitioner of the opportunity to exercise its right of redemption prior to the registration of the certificate of sale.

In its Answer with Counterclaim,^[8] respondent pointed out that petitioner cannot claim that it was unaware of the redemption price which is clearly provided in Section 47 of R.A. No. 8791, and that petitioner had all the opportune time to redeem the foreclosed properties from the time it received the letter of demand and the notice of sale before the registration of the certificate of sale. As to the check payment tendered by petitioner, respondent said that even assuming *arguendo* such redemption was timely made, it was not for the amount as required by law.

On January 8, 2007, the trial court rendered its decision dismissing the complaint as well as the counterclaim. It noted that the issue of constitutionality of Sec. 47 of R.A. No. 8791 was never raised by the petitioner during the pre-trial and the trial. Aside from the fact that petitioner's attempt to redeem was already late, there was no valid redemption made because Atty. Judy Ann Abat-Vera who talked to Atty. Joseph E. Mabilog of the Legal Division of respondent bank, was not properly authorized by petitioner's Board of Directors to transact for and in its behalf; it was only a certain Chan Guan Pue, the alleged President of petitioner corporation, who gave instruction to Atty. Abat-Vera to redeem the foreclosed properties.^[9]

Aggrieved, petitioner appealed to the CA which affirmed the trial court's decision. According to the CA, petitioner failed to justify why Section 47 of R.A. No. 8791 should be declared unconstitutional. Furthermore, the appellate court concluded that a reading of Section 47 plainly reveals the intention to shorten the period of redemption for juridical persons and that the foreclosure of the mortgaged properties in this case when R.A. No. 8791 was already in effect clearly falls within the purview of the said provision.^[10]

Petitioner's motion for reconsideration was likewise denied by the CA.

In the present petition, it is contended that Section 47 of R.A. No. 8791 is inapplicable considering that the contracting parties expressly and categorically agreed that the foreclosure of the real estate mortgage shall be in accordance with Act No. 3135. Citing *Co v. Philippine National Bank*^[11] petitioner contended that the right of redemption is part and parcel of the Deed of Real Estate Mortgage itself and attaches thereto upon its execution, a vested right flowing out of and made dependent upon the law governing the contract of mortgage and not on the mortgagee's act of extrajudicially foreclosing the mortgaged properties. This Court thus held in said case that "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."

Petitioner then argues that applying Section 47 of R.A. No. 8791 to the present case

would be a substantial impairment of its vested right of redemption under the real estate mortgage contract. Such impairment would be violative of the constitutional proscription against impairment of obligations of contract, a patent derogation of petitioner's vested right and clearly changes the intention of the contracting parties. Moreover, citing this Court's ruling in *Rural Bank of Davao City, Inc. v. Court of Appeals*^[12] where it was held that "Section 119 prevails over statutes which provide for a shorter period of redemption in extrajudicial foreclosure sales", and in *Sulit v. Court of Appeals*,^[13] petitioner stresses that it has always been the policy of this Court to aid rather than defeat the mortgagor's right to redeem his property.

Petitioner further argues that since R.A. No. 8791 does not provide for its retroactive application, courts therefore cannot retroactively apply its provisions to contracts executed and consummated before its effectivity. Also, since R.A. 8791 is a general law pertaining to the banking industry while Act No. 3135 is a special law specifically governing real estate mortgage and foreclosure, under the rules of statutory construction that in case of conflict a special law prevails over a general law regardless of the dates of enactment of both laws, Act No. 3135 clearly should prevail on the redemption period to be applied in this case.

The constitutional issue having been squarely raised in the pleadings filed in the trial and appellate courts, we shall proceed to resolve the same.

The law governing cases of extrajudicial foreclosure of mortgage is Act No. 3135,^[14] as amended by Act No. 4118. Section 6 thereof provides:

SEC. 6. In all cases in which an extrajudicial sale is made under the special power herein before 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 governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure,¹⁵ in so far as these are not inconsistent with the provisions of this Act.

The one-year period of redemption is counted from the date of the registration of the certificate of sale. In this case, the parties provided in their real estate mortgage contract that upon petitioner's default and the latter's entire loan obligation becoming due, respondent may immediately foreclose the mortgage judicially in accordance with the Rules of Court, or extrajudicially in accordance with Act No. 3135, as amended.

However, Section 47 of R.A. No. 8791 otherwise known as "The General Banking Law of 2000" which took effect on June 13, 2000, amended Act No. 3135. Said provision reads:

SECTION 47. *Foreclosure of Real Estate Mortgage.* — In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real

estate which is security for any loan or other credit accommodation granted, the mortgagor or debtor whose real property has been sold for the full or partial payment of his obligation shall have the right within one year after the sale of the real estate, to redeem the property by paying the amount due under the mortgage deed, with interest thereon at the rate specified in the mortgage, and all the costs and expenses incurred by the bank or institution from the sale and custody of said property less the income derived therefrom. However, the purchaser at the auction sale concerned whether in a judicial or extrajudicial foreclosure shall have the right to enter upon and take possession of such property immediately after the date of the confirmation of the auction sale and administer the same in accordance with law. Any petition in court to enjoin or restrain the conduct of foreclosure proceedings instituted pursuant to this provision shall be given due course only upon the filing by the petitioner of a bond in an amount fixed by the court conditioned that he will pay all the damages which the bank may suffer by the enjoining or the restraint of the foreclosure proceeding.

Notwithstanding Act 3135, juridical persons whose property is being sold pursuant to an extrajudicial foreclosure, shall have the right to redeem the property in accordance with this provision **until, but not after, the registration of the certificate of foreclosure sale** with the applicable Register of Deeds **which in no case shall be more than three (3) months after foreclosure, whichever is earlier.** Owners of property that has been sold in a foreclosure sale prior to the effectivity of this Act shall retain their redemption rights until their expiration. (Emphasis supplied.)

Under the new law, an exception is thus made in the case of juridical persons which are allowed to exercise the right of redemption only "until, but not after, the registration of the certificate of foreclosure sale" and in no case more than three (3) months after foreclosure, whichever comes first.^[16]

May the foregoing amendment be validly applied in this case when the real estate mortgage contract was executed in 1985 and the mortgage foreclosed when R.A. No. 8791 was already in effect?

We answer in the affirmative.

When confronted with a constitutional question, it is elementary that every court must approach it with grave care and considerable caution bearing in mind that every statute is presumed valid and every reasonable doubt should be resolved in favor of its constitutionality.^[17] For a law to be nullified, it must be shown that there is a clear and unequivocal breach of the Constitution. The ground for nullity must be clear and beyond reasonable doubt.^[18] Indeed, those who petition this Court to declare a law, or parts thereof, unconstitutional must clearly establish the basis therefor. Otherwise, the petition must fail.^[19]

Petitioner's contention that Section 47 of R.A. 8791 violates the constitutional proscription against impairment of the obligation of contract has no basis.