

SECOND DIVISION

[G.R. No. 183987, July 25, 2012]

ASIATRUST DEVELOPMENT BANK, PETITIONER, VS. CARMELO H. TUBLE, RESPONDENT.

DECISION

SERENO, J.:

Before this Court is a Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court, seeking to review the Court of Appeals (CA) 28 March 2008 Decision and 30 July 2008 Resolution in CA-G.R. CV No. 87410. The CA affirmed the Regional Trial Court (RTC) Decision of 15 May 2006 in Civil Case No. 67973, which granted to respondent the refund of P845,805.49^[1] representing the amount he had paid in excess of the redemption price.

The antecedent facts are as follows:^[2]

Respondent Carmelo H. Tuble, who served as the vice-president of petitioner Asiatruster Development Bank, availed himself of the car incentive plan and **loan privileges** offered by the bank. He was also entitled to the bank's Senior Managers Deferred Incentive Plan (DIP).

Respondent acquired a Nissan Vanette through the company's car incentive plan. The arrangement was made to appear as a lease agreement requiring only the payment of monthly rentals. Accordingly, the lease would be terminated in case of the employee's resignation or retirement prior to full payment of the price.

As regards the loan privileges, Tuble obtained three separate loans. The **first**, a real estate loan evidenced by the 18 January 1993 Promissory Note No. 0142^[3] with maturity date of 1 January 1999, was secured by a mortgage over his property covered by Transfer Certificate of Title No. T-145794. No interest on this loan was indicated.

The **second** was a consumption loan, evidenced by the 10 January 1994 Promissory Note No. 0143^[4] with the maturity date of 31 January 1995 and interest at 18% per annum. Aside from the said indebtedness, Tuble allegedly obtained a salary loan, his **third** loan.

On 30 March 1995, he resigned. Subsequently, he was given the option to either return the vehicle without any further obligation or retain the unit and pay its remaining book value.

Respondent had the following obligations to the bank after his retirement: (1) the purchase or return of the Nissan Vanette; (2) P100,000 as consumption loan; (3)

P421,800 as real estate loan; and (4) P16,250 as salary loan.^[5]

In turn, petitioner owed Tuble (1) his pro-rata share in the DIP, which was to be issued after the bank had given the resigned employee's clearance; and (2) P25,797.35 representing his final salary and corresponding 13th month pay.

Respondent claimed that since he and the bank were debtors and creditors of each other, the offsetting of loans could legally take place. He then asked the bank to simply compute his DIP and apply his receivables to his outstanding loans.^[6] However, instead of heeding his request, the bank sent him a 1 June 1995 demand letter^[7] obliging him to pay his debts. The bank also required him to return the Nissan Vanette. Despite this demand, the vehicle was not surrendered.

On 14 August 1995, Tuble wrote the bank again to follow up his request to offset the loans. This letter was not immediately acted upon. It was only on 13 October 1995 that the bank finally allowed the offsetting of his various claims and liabilities. As a result, his liabilities were reduced to P970,691.46 plus the unreturned value of the vehicle.

In order to recover the Nissan Vanette, the bank filed a Complaint for replevin against Tuble. Petitioner obtained a favorable judgment. Then, to collect the liabilities of respondent, it also filed a Petition for Extra-judicial Foreclosure of real estate mortgage over his property. The Petition was based only on his real estate loan, which at that time amounted to **P421,800**. His other liabilities to the bank were excluded. The foreclosure proceedings terminated, with the bank emerging as the purchaser of the secured property.

Thereafter, Tuble timely redeemed the property on 17 March 1997 for P1,318,401.91.^[8] Notably, the redemption price increased to this figure, because the bank had unilaterally imposed additional interest and other charges.

With the payment of P1,318,401.91, Tuble was deemed to have fully paid his accountabilities. Thus, three years after his payment, the bank issued him a Clearance necessary for the release of his DIP share. Subsequently, he received a Manager's Check in the amount of P166,049.73 representing his share in the DIP funds.

Despite his payment of the redemption price, Tuble questioned how the foreclosure basis of P421,800 ballooned to P1,318,401.91 in a matter of one year. Belatedly, the bank explained that this redemption price included the Nissan Vanette's book value, the salary loan, car insurance, **18% annual interest on the bank's redemption price of P421,800**, penalty and **interest charges on Promissory Note No. 0142**, and litigation expenses.^[9] By way of note, from these items, the amounts that remained to be collected as stated in the Petition before us, are (1) the 18% annual interest on the redemption price and (2) the interest charge on Promissory Note No. 0142.

Because Tuble disputed the redemption price, he filed a Complaint for recovery of a sum of money and damages before the RTC. He specifically sought to collect P896,602.02^[10] representing the excess charges on the redemption price.

Additionally, he prayed for moral and exemplary damages.

The RTC ruled in favor of Tuble. The trial court characterized the redemption price as excessive and arbitrary, because the correct redemption price should not have included the above-mentioned charges. Moral and exemplary damages were also awarded to him.

According to the trial court,^[11] the **value of the car** should not have been included, considering that the bank had already recovered the Nissan Vanette. The obligations arising from the **salary loan** and **car insurance** should have also been excluded, for there was no proof that these debts existed. The **interest and penalty charges** should have been deleted, too, because Promissory Note No. 0142 did not indicate any interest or penalty charges. Neither should litigation expenses have been added, since there was no proof that the bank incurred those expenses.

As for the 18% annual interest on the bid price of P421,800, the RTC agreed with Tuble that this charge was unlawful. Act 3135^[12] as amended, in relation to Section 28 of Rule 39 of the Rules of Court,^[13] only allows the mortgagee to charge an interest of 1 % per month if the foreclosed property is redeemed. Ultimately, under the principle of *solutio indebiti*, the trial court required the refund of these amounts charged in excess of the correct redemption price.

On appeal, the CA affirmed the findings of the RTC.^[14] The appellate court only expounded the rule that, at the time of redemption, the one who redeemed is liable to pay only 1 % monthly interest plus taxes. Thus, the CA also concluded that there was practically no basis to impose the additional charges.

Before this Court, petitioner reiterates its claims regarding the inclusion in the redemption price of the 18% annual interest on the bid price of P421,800 and the interest charges on Promissory Note No. 0142.

Petitioner emphasizes that an 18% interest rate allegedly referred to in the mortgage deed is the proper basis of the interest. Pointing to the Real Estate Mortgage Contract, the bank highlights the blanket security clause or "dragnet clause" that purports to cover all obligations owed by Tuble:^[15]

All obligations of the Borrower and/or Mortgagor, its renewal, extension, amendment or novation irrespective of whether such obligations as renewed, extended, amended or novated are in the nature of new, separate or additional obligations;

All other obligations of the Borrower and/or Mortgagor in favor of the Mortgagee, executed before or after the execution of this document whether presently owing or hereinafter incurred and whether or not arising from or connection with the aforesaid loan/Credit accommodation;
x x x.

Tuble's obligations are defined in Promissory Note Nos. 0142 and 0143. By way of recap, Promissory Note No. 0142 refers to the real estate loan; it does not contain

any stipulation on interest. On the other hand, Promissory Note No. 0143 refers to the consumption loan; it charges an 18% annual interest rate. Petitioner uses this latter rate to impose an interest over the bid price of P421,800.

Further, the bank sees the inclusion in the redemption price of an addition 12% annual interest on Tuble's real estate loan.

On top of these claims, the bank raises a new item - the **car's rental fee** - to be included in the redemption price. In dealing with this argument raised for the first time on certiorari, this Court dismisses the contention based on the well-entrenched prohibition on raising new issues, especially factual ones, on appeal.^[16]

Thus, the pertinent issue in the instant appeal is whether or not the bank is entitled to include these items in the redemption price: (1) the interest charges on Promissory Note No. 0142; and (2) the 18% annual interest on the bid price of P421,800.

RULING OF THE COURT

The 18% Annual Interest on the Bid Price of P421,800

The Applicable Law

The bank argues that instead of referring to the Rules of Court to compute the redemption price, the courts *a quo* should have applied the General Banking Law,^[17] considering that petitioner is a banking institution.

The statute referred to requires that in the event of judicial or extrajudicial foreclosure of any mortgage on real estate that is used as security for an obligation to any bank, banking institution, or credit institution, the mortgagor can 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**.^[18]

Petitioner is correct. We have already established in *Union Bank of the Philippines v. Court of Appeals*,^[19] citing *Ponce de Leon v. Rehabilitation Finance Corporation*^[20] and *Sy v. Court of Appeals*,^[21] that the General Banking Act - being a special and subsequent legislation — has the effect of amending Section 6 of Act No. 3135, **insofar as the redemption price is concerned, when the mortgagee is a bank**. Thus, the amount to be paid in redeeming the property is determined by the General Banking Act, and not by the Rules of Court in Relation to Act 3135.

The Remedy of Foreclosure

In reviewing the bank's additional charges on the redemption price as a result of the foreclosure, this Court will first clarify certain vital points of fact and law that both parties and the courts *a quo* seem to have missed.

Firstly, at the time respondent resigned, which was chronologically before the foreclosure proceedings, he had several liabilities to the bank. Secondly, when the bank later on instituted the foreclosure proceedings, it foreclosed only **the**

mortgage secured by the real estate loan of P421,800.^[22] It did not seek to include, in the foreclosure, the consumption loan under Promissory Note No. 0143 or the other alleged obligations of respondent. Thirdly, on 28 February 1996, the bank availed itself of the remedy of foreclosure and, in doing so, effectively gained the property.

As a result of these established facts, one evident conclusion surfaces: the Real Estate Mortgage Contract on the secured property is already extinguished.

In foreclosures, the mortgaged property is subjected to the proceedings for the satisfaction of the obligation.^[23] As a result, payment is effected by abnormal means whereby the debtor is forced by a judicial proceeding to comply with the presentation or to pay indemnity.^[24]

Once the proceeds from the sale of the property are applied to the payment of the obligation, the obligation is already extinguished.^[25] Thus, in *Spouses Romero v. Court of Appeals*,^[26] we held that the mortgage indebtedness was extinguished with the foreclosure and sale of the mortgaged property, and that what remained was the right of redemption granted by law.

Consequently, since the Real Estate Mortgage Contract is already extinguished, petitioner can no longer rely on it or invoke its provisions, including the dragnet clause stipulated therein. It follows that the bank cannot refer to the 18% annual interest charged in Promissory Note No. 0143, an obligation allegedly covered by the terms of the Contract.

Neither can the bank use the consummated contract to collect on the rest of the obligations, which were not included when it earlier instituted the foreclosure proceedings. It cannot be allowed to use the same security to collect on the other loans. To do so would be akin to foreclosing an already foreclosed property.

Rather than relying on an expired contract, the bank should have collected on the excluded loans by instituting the proper actions for recovery of sums of money. Simply put, petitioner should have run after Tuble separately, instead of hostaging the same property to cover all of his liabilities.

The Right of Redemption

Despite the extinguishment of the Real Estate Mortgage Contract, Tuble had the right to redeem the security by paying the redemption price.

The right of redemption of foreclosed properties was a statutory privilege^[27] he enjoyed. Redemption is by force of law, and the purchaser at public auction is bound to accept it.^[28] Thus, it is the law that provides the terms of the right; the mortgagee cannot dictate them. The terms of this right, based on Section 47 of the General Banking Law, are as follows:

1. The redemptioner shall have the right within one year after the sale of the real estate, to redeem the property.