

FIRST DIVISION

[G.R. No. 171868, July 27, 2011]

**SPOUSES FRANCISCO D. YAP AND WHELMA S. YAP,
PETITIONERS, VS. SPOUSES ZOSIMO DY, SR. AND NATIVIDAD
CHIU DY, SPOUSES MARCELINO MAXINO AND REMEDIOS L.
MAXINO, PROVINCIAL SHERIFF OF NEGROS ORIENTAL AND
DUMAGUETE RURAL BANK, INC., RESPONDENTS.**

[G.R. NO. 171991]

**DUMAGUETE RURAL BANK, INC. (DRBI) HEREIN REPRESENTED
BY MR. WILLIAM D.S. DICHOSO, PETITIONERS, VS. SPOUSES
ZOSIMO DY, SR. AND NATIVIDAD CHIU DY, SPOUSES
MARCELINO MAXINO AND REMEDIOS MAXINO, AND SPOUSES
FRANCISCO D. YAP AND WHELMA S. YAP, RESPONDENTS.**

D E C I S I O N

VILLARAMA, JR., J.:

May persons to whom several mortgaged lands were transferred without the knowledge and consent of the creditor redeem only several parcels if all the lands were sold together for a single price at the foreclosure sale? This is the principal issue presented to us for resolution in these two petitions for review on certiorari assailing the May 17, 2005 Decision^[1] and March 15, 2006 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. C.V. No. 57205.

The antecedents are as follows:

The spouses Tomas Tirambulo and Salvacion Estorco (Tirambulos) are the registered owners of several parcels of land located in Ayungon, Negros Oriental, registered under Transfer Certificate of Title (TCT) Nos. T-14794, T-14777, T-14780, T-14781, T-14783 and T-20301 of the Registry of Deeds of Negros Oriental, and more particularly designated as follows:

(1) TCT No. T-14777	Lot 1 of Plan Pcs- 61,371 11728 sq.m.
(2) TCT No. T-20301	Lot 3 of Plan Psu- 17,373 124376 sq.m.
(3) TCT No. T-14780	Lot 4 of Plan Pcs- 27,875 11728 sq.m.
(4) TCT No. T-14794	Lot 5 of Plan Psu- 2,900 124376 sq.m.
(5) TCT No. T-14781	Lot 6 of Plan Pcs- 16,087 11728 sq.m.
(6) TCT No. T-14783	Lot 8 of Plan Pcs- 39,888

The Tirambulos likewise own a parcel of land denominated as Lot 846, covered by Tax Declaration No. 08109.

On December 3, 1976, the Tirambulos executed a Real Estate Mortgage^[3] over Lots 1, 4, 5, 6 and 8 in favor of the Rural Bank of Dumaguete, Inc., predecessor of Dumaguete Rural Bank, Inc. (DRBI), to secure a P105,000 loan extended by the latter to them. Later, the Tirambulos obtained a second loan for P28,000 and also executed a Real Estate Mortgage^[4] over Lots 3 and 846 in favor of the same bank on August 3, 1978.

Subsequently, on October 27, 1979, the Tirambulos sold all seven mortgaged lots to the spouses Zosimo Dy, Sr. and Natividad Chiu (the Dys) and the spouses Marcelino C. Maxino and Remedios Lasola (the Maxinos) without the consent and knowledge of DRBI. This sale, which was embodied in a Deed of Absolute Sale,^[5] was followed by a default on the part of the Tirambulos to pay their loans to DRBI. Thus, DRBI extrajudicially foreclosed the December 3, 1976 mortgage and had Lots 1, 4, 5, 6 and 8 sold at public auction on March 31, 1982.

At the auction sale, DRBI was proclaimed the highest bidder and bought said lots for P216,040.93. The Sheriff's Certificate of Sale^[6] stated that the "sale is subject to the rights of redemption of the mortgagor (s) or any other persons authorized by law so to do, within a period of one (1) year from registration hereof."^[7] The certificate of sale, however, was not registered until almost a year later, or on June 24, 1983.

On July 6, 1983, or twelve (12) days after the sale was registered, DRBI sold Lots 1, 3 and 6 to the spouses Francisco D. Yap and Whelma D. Yap (the Yaps) under a Deed of Sale with Agreement to Mortgage.^[8] It is important to note, however, that **Lot 3 was not among the five properties foreclosed and bought by DRBI at public auction.**

On August 8, 1983, or well within the redemption period, the Yaps filed a Motion for Writ of Possession^[9] alleging that they have acquired all the rights and interests of DRBI over the foreclosed properties and are entitled to immediate possession of the same because the one-year redemption period has lapsed without any redemption being made. Said motion, however, was ordered withdrawn on August 22, 1983^[10] upon motion of the Yaps, who gave no reason therefor.^[11] Three days later, or on August 25, 1983, the Yaps again filed a Motion for Writ of Possession.^[12] This time the motion was granted, and a Writ of Possession^[13] over Lots 1, 3 and 6 was issued in favor of the Yaps on September 5, 1983. They were placed in possession of Lots 1, 3 and 6 seven days later.

On May 22, 1984, roughly a month before the one-year redemption period was set to expire, the Dys and the Maxinos attempted to redeem Lots 1, 3 and 6. They tendered the amount of P40,000.00 to DRBI and the Yaps,^[14] but both refused, contending that the redemption should be for the full amount of the winning bid of P216,040.93 plus interest for all the foreclosed properties.

Thus, on May 28, 1984, the Dys and the Maxinos went to the Office of the Sheriff of Negros Oriental and paid P50,625.29 (P40,000.00 for the principal plus P10,625.29 for interests and Sheriff's Commission) to effect the redemption.^[15] Noticing that Lot 3 was not included in the foreclosure proceedings, Benjamin V. Diputado, Clerk of Court and Provincial Sheriff, issued a Certificate of Redemption^[16] in favor of the Dys and the Maxinos only for Lots 1 and 6, and stated in said certificate that Lot 3 is not included in the foreclosure proceedings. By letter^[17] of even date, Atty. Diputado also duly notified the Yaps of the redemption of Lots 1 and 6 by the Dys and the Maxinos, as well as the non-inclusion of Lot 3 among the foreclosed properties. He advised the Yaps to personally claim the redemption money or send a representative to do so.

In a letter to the Provincial Sheriff on May 31, 1984, the Yaps refused to take delivery of the redemption price arguing that one of the characteristics of a mortgage is its indivisibility and that one cannot redeem only some of the lots foreclosed because all the parcels were sold for a single price at the auction sale.^[18]

On June 1, 1984, the Provincial Sheriff wrote the Dys and the Maxinos informing them of the Yaps' refusal to take delivery of the redemption money and that in view of said development, the tender of the redemption money was being considered as a consignment.^[19]

On June 15, 1984, the Dys and the Maxinos filed Civil Case No. 8426 with the Regional Trial Court of Negros Oriental for accounting, injunction, declaration of nullity (with regard to Lot 3) of the Deed of Sale with Agreement to Mortgage, and damages against the Yaps and DRBI. In their complaint,^[20] they prayed

a) That the Deed of Sale With Agreement to Mortgage ... be declared null and void ab initio;

b) That defendant Yap[s'] possession of Lot No. 3, TCT No. T20301 based as it was on a void sale, be declared illegal from the very beginning;

c) That defendants be ordered to render to plaintiffs a fair accounting of the harvests and income which defendants made from said Lot No. 3 and, in addition, be ordered to pay to plaintiffs damages for wrongfully depriving plaintiffs of the use and enjoyment of said property;

d) That the redemption which plaintiffs made of Lot No. 1, TCT No. 14777, and Lot No. 6, TCT No. 14781, through the Provincial Sheriff of Negros Oriental, be declared valid and binding on the defendants, thereby releasing and freeing said parcels of land from whatever liens or claims that said defendants might have on them;

e) That defendants be likewise ordered to render to plaintiffs full and fair accounting of all the harvests, fruits, and income that they or either of them might have derived from said two parcels of land starting from the time defendant Yap first took possession thereof and harvested the coconuts in September, 1983;

f) That, after the accounting herein prayed for, defendants be required to deliver to plaintiffs the net proceeds of the income from the three parcels of land subject of this case, together with interest at the legal rate;

g) That for his acts of misrepresentation and deceit in obtaining a writ of possession over the three parcels of land subject of this case, and for the highly irregular and anomalous procedures and maneuvers employed by defendant Yap in securing said writ, as well as for harvesting the coconuts even after knowing that plaintiffs had already fully redeemed the properties in question and, with respect to Lot No. 3, after knowing that the same was not in fact included in the foreclosure and, therefore, could not have been validly sold by the bank to him, said defendant Yap be condemned to pay plaintiffs moral damages in the amount of P200,000.00, plus punitive and exemplary damages in the amount of P100,000.00;

h) That for falsifying the Sheriff's Certificate of Sale and selling unlawfully Lot No. 3, TCT No. T-20301, to its co-defendant Yap, defendant DRBI be condemned to pay to plaintiffs actual damages in the amount of P50,000.00; moral damages in the amount of P200,000.00; and punitive and exemplary damages in the amount of P100,000.00;

i) That defendants be condemned to pay solidarily to plaintiffs attorney's fees in the amount of P50,000.00; other legitimate expenses of litigation in the amount of P30,000.00; and the costs of suit;

j) That pending hearing of this case, a writ of preliminary injunction be issued enjoining and restraining the defendants, particularly defendant Yap, from disturbing and interfering the plaintiffs' possession and other rights of ownership over the land in question;

k) That pending hearing of the petition for preliminary injunction, a temporary restraining order be issued against the defendants, particularly against defendant Yap, to serve the same purpose for which the writ of preliminary injunction is herein prayed for; and

l) That, after hearing of the main case, said preliminary injunction be made permanent.

Furthermore, plaintiffs pray for all other reliefs which may be just and equitable in the premises.^[21]

Thereafter, on June 19, 1984, the Dys and the Maxinos consigned to the trial court an additional sum of P83,850.50 plus sheriff's commission fee of P419.25 representing the remaining balance of the purchase price that the Yaps still owed DRBI by virtue of the sale to them by the DRBI of Lots 1, 3 and 6.^[22]

Meanwhile, by letter^[23] dated June 27, 1984, the Yaps told DRBI that no redemption has been made by the Tirambulos or their successors-in-interest and

requested DRBI to consolidate its title over the foreclosed properties by requesting the Provincial Sheriff to execute the final deed of sale in favor of the bank so that the latter can transfer the titles of the two foreclosed properties to them.

On the same date, the Yaps also wrote the Maxinos informing the latter that during the last harvest of the lots bought from DRBI, they excluded from the harvest Lot 3 to show their good faith. Also, they told the Maxinos that they were formally turning over the possession of Lot 3 to the Maxinos, without prejudice to the final determination of the legal implications concerning Lot 3. As to Lots 1 and 6, however, the Yaps stated that they intended to consolidate ownership over them since there has been no redemption as contemplated by law. Included in the letter was a liquidation of the copra proceeds harvested from September 7, 1983 to April 30, 1984 for Lots 1, 3 and 6.^[24]

Later, on July 5, 1984, the Yaps filed Civil Case No. 8439 for consolidation of ownership, annulment of certificate of redemption, and damages against the Dys, the Maxinos, the Provincial Sheriff of Negros Oriental and DRBI. In their complaint,^[25] the Yaps prayed

1. That [they] be declared the exclusive owners of Lot No. 1 covered by TCT No. T-14777 and Lot No. 6 covered by TCT No. T-14781 for failure on the part of defendants Zosimo Dy, Sr., and Marcelino Maxino to redeem the properties in question within one (1) year from the auction sale.
2. That defendants be [declared] solidarily liable to pay moral damages in the amount of ONE HUNDRED THOUSAND PESOS (P100,000.00), THIRTY[-]FIVE THOUSAND PESOS (P35,000.00) as attorney's fees and FIFTEEN THOUSAND PESOS (P15,000.00) as exemplary damages;
3. That the Provincial Sheriff be required to execute the final Deed of Sale in favor of the bank and the bank be in turn required to transfer the property to the plaintiffs in accordance with the Deed of Sale with Mortgage.
4. That the court grant such other relief as may be deemed just and equitable under the premises.^[26]

Civil Case Nos. 8426 and 8439 were tried jointly.

On October 24, 1985, the Yaps, by counsel, filed a motion to withdraw from the provincial sheriff the redemption money amounting to P50,373.42.^[27] Said motion was granted on October 28, 1985 after a Special Power of Attorney executed by Francisco Yap in favor of his brother Valiente Yap authorizing the latter to receive the P50,373.42 redemption money was presented in court.^[28]

On February 12, 1997, the trial court rendered decision^[29] in favor of the Yaps. The *fallo* reads: