

## SECOND DIVISION

[ G.R. No. 174329, October 20, 2010 ]

**DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS.  
ENVIRONMENTAL AQUATICS, INC., LAND SERVICES AND  
MANAGEMENT ENTERPRISES, INC. AND MARIO MATUTE  
RESPONDENTS.**

### DECISION

**CARPIO, J.:**

#### The Case

This is a petition<sup>[1]</sup> for review on certiorari under Rule 45 of the Rules of Court. The petition challenges the 16 January 2006 Decision<sup>[2]</sup> and 16 August 2006 Resolution<sup>[3]</sup> of the Court of Appeals in CA-G.R. CV No. 46207. The Court of Appeals affirmed with modification the 7 January 1994 Decision<sup>[4]</sup> of the Regional Trial Court (RTC), National Capital Judicial Region, Branch 84, Quezon City, in Civil Case No. Q-91-10563.

#### The Facts

On 10 September 1976, respondents Environmental Aquatics, Inc. (EAI) and Land Services and Management Enterprises, Inc. (LSMEI) loaned P1,792,600 from petitioner Development Bank of the Philippines (DBP). As security for the loan, LSMEI mortgaged to DBP its 411-square meter parcel of land situated in New Manila, Quezon City, and covered by Transfer Certificate of Title No. 209937.<sup>[5]</sup> The mortgage contract<sup>[6]</sup> stated that:

If at anytime the Mortgagor shall fail or refuse to pay any of the amortization on the indebtedness, or the interest when due, or whatever other obligation herein secured or to comply with any of the conditions and stipulations herein agreed, or shall initiate insolvency proceedings or be declared involuntary insolvent (sic), or uses the proceeds of the loan for purposes other than those specified herein then all the amortizations and other obligations of the Mortgagor of any nature, shall become due, payable and defaulted and the Mortgagee may immediately foreclose this mortgage judicially or extrajudicially under Act No. 3135 as amended, or under Republic Act No. 85, as amended and or under Act No. 1508 as amended.<sup>[7]</sup>

On 31 August 1981, DBP restructured the loan. In their promissory notes,<sup>[8]</sup> EAI

and LSMEI stated that:

On or before March 14, 1986, for value received, we jointly and severally, promise to pay the DEVELOPMENT BANK OF THE PHILIPPINES, or at its office at Makati, Metro Manila, Philippines, the sum of \* \* ONE MILLION NINE HUNDRED SEVENTY THREE THOUSAND ONE HUNDRED PESOS (P1,973,100.00), Philippine Currency, with interest at the rate of sixteen per centum (16%) per annum.<sup>[9]</sup>

On or before March 14, 1986, for value received, we jointly and severally, promise to pay the DEVELOPMENT BANK OF THE PHILIPPINES, or at its office at Makati, Metro Manila, Philippines, the sum of \* \* ONE HUNDRED NINETY THOUSAND SEVEN HUNDRED PESOS \* \* (P190,700), Philippine Currency, with interest at the rate of fourteen per centum (14%) per annum.<sup>[10]</sup>

On or before March 14, 1982, for value received, I/We, jointly and severally, promise to pay the DEVELOPMENT BANK OF THE PHILIPPINES, or order at its office at Makati, Metro Manila, Philippines, the sum of \* \* SIX HUNDRED EIGHTY FOUR THOUSAND SEVEN HUNDRED EIGHTY EIGHT PESOS \* \* (P684,788.00), Philippine Currency, with interest at the rate of \_\_\_\_\_ per centum (\_\_\_%) per annum.<sup>[11]</sup>

EAI and LSMEI failed to pay the loan. As of 11 September 1990, the loan had increased to P16,384,419.90.<sup>[12]</sup> On 25 October 1990, DBP applied for extrajudicial foreclosure of the real estate mortgage. In its application letter,<sup>[13]</sup> DBP stated that:

[W]e request [the ex-officio sheriff] to take possession of the properties described in the above-mentioned mortgages as well as those embraced in the after acquired properties clause thereof, and sell the same at public auction in accordance with the provisions of Act 3135, as amended by Act 4118, with respect to the real estate and Act 1508 with respect to the chattels, as amended by Presidential Decree No. 385 aforesaid.<sup>[14]</sup>

During the 19 December 1990 public auction, the ex-officio sheriff sold the property to DBP as the highest bidder for P1,507,000.<sup>[15]</sup>

On 15 May 1991, LSMEI transferred its right to redeem the property to respondent Mario Matute (Matute). In his 27 July 1991 letter,<sup>[16]</sup> Atty. Julian R. Vitug, Jr. (Atty. Vitug, Jr.) informed DBP that his client Matute was interested in redeeming the property by paying the P1,507,000 purchase price, plus other costs. In its 29 August 1991 letter,<sup>[17]</sup> DBP informed Atty. Vitug, Jr. that Matute could redeem the property by paying the remaining balance of EAI and LSMEI's loan. As of 31 August 1991, the loan amounted to P19,279,106.22.<sup>[18]</sup>

On 8 November 1991, EAI, LSMEI and Matute filed with the RTC a complaint<sup>[19]</sup>

praying that DBP be ordered "to accept x x x Matute's bonafide offer to redeem the foreclosed property."<sup>[20]</sup>

### **The RTC's Ruling**

In its 7 January 1994 Decision, the RTC allowed Matute to redeem the property at its P1,507,000 purchase price. The RTC held that:

The question is whether, as the defendant DBP contends, the redemption should be made by paying to the Bank the entire amount owed by plaintiffs-corporations "in the amount of P18,301,653.11 as of the date of foreclosure on December 12, 1990", invoking Sec. 16 of Executive Order No. 81 otherwise known as the 1986 Revised Charter of DBP. On the other hand, the plaintiffs contend that this redemption may be made only by reimbursing the defendant Bank what it has paid for at the auction sale made to it (sic), in the amount of P1,507,000.00, pursuant to Section 5 of Act No. 3135 and Sections 26 to 30 of Rule 39 of the Revised Rules of Court.

Plaintiffs are correct. It is to be noted that the mortgage at issue was executed on September 10, 1976, Exhs. "A" and "2". Republic Act No. 2081 entitled "An Act to Amend Republic Act Numbered Eighty-Five and Other Pertinent Laws, to Provide Facilities for Intermediate and Long-Term Credit by Converting the Rehabilitation Finance Corporation into the Development Bank of the Philippines, Authorizing the said Bank to Aid in the Establishment of Provincial and City Private Development Banks, and for Other Purposes" was approved and made effective on June 14, 1958. It was therefore the law the Charter (sic) of DBP, when in 1976 the mortgage here in issue was executed. On the other hand, Executive Order No. 81, with its Section 16 thereof (sic) reading as follows:

"Sec. 16. Right of Redemption. -- Any mortgagor of the Bank whose real property has been extrajudicially sold at public auction shall, within one (1) year counted from the date of registration of the certificate of sale, have the right to redeem the real property by paying to the Bank all of the latter's claim against him, as determined by the Bank."

is of recent vintage. Executive Order No. 81, issued by then President Corazon C. Aquino, was made effective on December 3, 1986. Clearly, the application of Executive Order No. 81 to the mortgage herein involved would violate the constitutional proscription against the impairment of contracts. Sec. 16 of Executive Order No. 81, which governs the right of redemption in extrajudicial foreclosures, is not found in Rep. Act No. 2081 or even in Rep. Act No. 85. And so, to make the redemption subject to a subsequent law would be obviously prejudicial to the party exercising the right to redeem. Any change in the law governing redemption that would make it more difficult than under the law at the time of the mortgage cannot be given retroactive effect.

Under the terms of the mortgage contract, "Exh. "2", specifically paragraph 4 thereof:

"x x x the Mortgagee may immediately foreclose this mortgage judicially or extrajudicially under Act No. 3135 as amended, or under Republic Act No. 85, as amended and or under Act No. 1508 as amended. x x x x."

Going by the literal terms of this quoted provision of the mortgage contract, defendant DBP stand bound by the same. When defendant DBP foreclosed the mortgage at issue, it chose Act 3135. That was an option it freely exercised without the least intervention of plaintiffs. We cannot, therefore, escape the conclusion that what defendant DBP agreed to in respect to (sic) the possible foreclosure of its mortgage was to subject the same to the provisions of Act No. 3135, as amended, should the DBP opt to utilize said law. Section 6 of Act No. 3135 very clearly governs the right of redemption in extrajudicial foreclosures thus:

"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, in so far as these are not inconsistent with the provisions of this Act."

Sections four hundred sixty-four to four hundred sixty-five, inclusive, of the Code of Civil Procedure, since the promulgation of the Rules of Court of 1940, became sections 29, 30 and 32 of Rule 39. The same sections were reproduced in the Revised Rules of Court.

Having thus come to the conclusion that Act 3135 and Sections 29 to 32 of Rule 39 of the Rules of Court rather than Executive Order No. 81 are the laws applicable to the right of redemption invoke (sic) by plaintiffs in this case, it would appear that all that remains for this Court to do is to apply the said legal precepts. Pursuant to Section 30 of Rule 39, "the judgment debtor -- or his successor-in-interest per Sec. 29, here plaintiff Mario Batute -- 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 per centum 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 the purchase, and interest on such last-named amount at the same rate; x x x".<sup>[21]</sup>

DBP appealed to the Court of Appeals.

### **The Court of Appeals' Ruling**

In its 16 January 2006 Decision, the Court of Appeals affirmed with modification the RTC's 7 January 1994 Decision. The Court of Appeals imposed a 16% annual interest on the remaining balance of the loan. The Court of Appeals held that:

The dearth of merit in appellant bank's position is, however, evident from the fact that, as hereinbefore quoted, paragraph 4 of the September 10, 1976 **Deed of Real Estate Mortgage** executed in its favor by appellees **EAI** and **LSMEI** provided for three options by which the extrajudicial foreclosure thereof may be effected. Thereunder given the choice of resorting to "Act No. 3135 as amended, or Republic Act No. 85 as amended, or Act No. 1508 as amended", appellant bank undoubtedly opted for the first of the aforesaid laws as may be gleaned from the following prayer it interposed in the application for foreclosure of mortgage it filed with the Ex-Officio Sheriff of Quezon City on October 25, 1990, viz:

"WHEREFORE, we request you to take possession of the properties described in the above-mentioned mortgages xxx xxx xxx and sell the same at public auction in accordance with the provisions of Act 3135, as amended by Act 4118, with respect to the real estate xxx xxx xxx"

With appellant bank's categorical election of Act No. 3135 as the controlling law for the extrajudicial foreclosure of the subject mortgage, it goes without saying that, insofar as the redemption of the subject realty is concerned, the provisions of said law are deemed written into the parties' agreement and, as such, should be respected as the law between them.

Anent the redemption of mortgaged properties extrajudicially foreclosed in accordance therewith, Section 6 of Act No. 3135 provides as follows:

"Section 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interests (sic) 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 sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act."