

SECOND DIVISION

[G.R. No. 178242, January 20, 2009]

**HEIRS OF NORBERTO J. QUISUMBING, PETITIONERS, VS.
PHILIPPINE NATIONAL BANK AND SANTIAGO LAND
DEVELOPMENT CORPORATION, RESPONDENTS.**

DECISION

CARPIO MORALES, J.:

From the Court of Appeals Decision^[1] of February 14, 2007 denying petitioners' appeal from the Decision^[2] of the Regional Trial Court, Branch 62, Makati City in Civil Case No. 10513, they come to this Court on petition for review on certiorari.

Culled from the eight-volume records of the case are the following facts:

In 1984, spouses Ricardo C. Silverio and Beatriz Sison-Silverio (spouses Silverio) and Ricardo C. Silverio as Chairman of the Board of the following companies, namely Delta Motors Corporation (Delta Motors), Komatsu Industries (Komatsu), R.C. Silverio Management Corporation (RCSMC), through Deeds of Assignment^[3] dated April 11 and 12, 1985, assigned to Atty. Norberto J. Quisumbing (Quisumbing) their rights of redemption with respect to various real properties which herein respondent Philippine National Bank (PNB) had foreclosed and acquired as the highest bidder. The properties included lots in Quezon City, Manila, Pampanga and Bulacan in the name of Ricardo C. Silverio, married to Beatriz Sison; a lot in Tagaytay in the name of Ricardo C. Silverio; lots in Nueva Ecija in the name of RCSMC; lots in Baguio and Benguet in the name of Delta Motors; a lot in Zambales in the name of RCSMC; and a lot in Rizal (actually Pasong Tamo, Makati) including improvements in the name of Komatsu (hereafter referred to as Pasong Tamo property).

By letter^[4] dated April 8, 1985, Quisumbing made a formal tender of redemption to PNB for the abovementioned properties, with the request that he be informed within 10 days of the total amount of the redemption prices so "he would know how much to pay." Quisumbing furnished the sheriffs who conducted the sales, as well as the registers of deeds in the various localities where the properties are situated, with a copy of said tender letter.

Acting on Quisumbing's tender of redemption, the PNB, by letter of April 15, 1985, requested copies of the Deeds of Assignment so that it may "have a basis to reply to" his request.^[5] Quisumbing furnished PNB with copies of the Deeds, requesting a reply to his tender letter and requested for the computation of the total amount of redemption price for which he gave PNB until April 30, 1985 to do so. Before PNB could reply, however, or on April 23, 1985, Quisumbing executed an Affidavit of Redemption,^[6] furnishing PNB, the sheriffs and the registers of deeds a copy

thereof.

Before the one-year redemption period expired, PNB, by letter dated May 3, 1985, [7] denied Quisumbing's offer of redemption on the ground that the Deeds of Assignment were invalid for not having been registered and for being against Art. 1491 (5) of the Civil Code; that the tender was not proper because it was not accompanied by actual money payment; and that the amount Quisumbing offered was way below that required under Sec. 25 of P.D. No. 694.

Quisumbing thus filed a Complaint [8] before the Regional Trial Court (RTC) of Makati [9] against PNB to compel it to allow him to exercise his right of redemption over the foreclosed properties and to inform him of the total amount of redemption price. At the same time, he caused the annotation of a notice of *lis pendens* on the certificates of title of the properties.

In its Answer, [10] PNB contended that Quisumbing had no cause of action as his tender offer was "pro-forma," as the same was unaccompanied by cash payment; that the offer was not in accordance with Section 25 of P.D. No. 694, as amended; that the assignment of rights made in Quisumbing's favor was ineffectual because the same was not registered and annotated on the certificates of title of the properties; that the Deeds of Assignment executed by RSCMC, Komatsu and Delta Motors were defectively acknowledged as public instruments; and that the assignments were barred by Article 1491 (5) of the Civil Code. [11] During the pendency of the case, Quisumbing died, hence, he was substituted by his heirs—herein petitioners on September 14, 1990.

On December 8, 1989, with the approval by Branch 149 of the Makati RTC, the herein other respondent Santiago Land Development Corporation (SLDC) intervened, it having purchased *pendente lite* from PNB the Pasong Tamo property, and adopted in its Answer-in-Intervention PNB's defenses as set forth in its Answer, and raised additional defenses.

Petitioners thus filed before the appellate court a Petition for Certiorari, docketed as CA-G.R. SP No. 25826, questioning, *inter alia*, the trial court's grant of SLDC's move to intervene, arguing that SLDC should have joined as an additional defendant for it to be bound by all prior proceedings.

By Decision dated July 6, 1992, the appellate court granted the petition of petitioners and nullified the trial court's Order granting SLDC's intervention. SLDC appealed to this Court via certiorari, docketed as G.R. No. 106194.

By Decision [12] of January 28, 1997, the Court dismissed SLDC's petition and affirmed the appellate court's decision, ruling that SLDC is a transferee *pendente lite* and, as such, could no longer intervene as the law already considers it joined or substituted in the pending action, hence, bound by all prior proceedings and barred from presenting a new or different claim.

SLDC thereupon filed a Motion for Partial Substitution in Civil Case No. 10513, which was granted on April 14, 1998.

By Decision^[13] of October 24, 2000, the trial court dismissed petitioner's Amended Complaint as against PNB, as well as that against SLDC, ruling that Quisumbing did not make a valid tender of redemption as it was not accompanied by cash payment; that Sec. 25 of P.D. No. 694 is not unconstitutional and was applicable not only to direct debtors/mortgagors but constructively also to accommodation mortgagors following *Nepomuceno v. RFC*.^[14] Aggrieved, petitioners appealed to the Court of Appeals.

By the assailed Decision of February 14, 2007, the appellate court affirmed the trial court's decision, holding that there was no valid offer to redeem the properties owing to Quisumbing's failure to validly tender payment; and that even if his filing of the complaint was considered as judicial redemption, it was still ineffectual due to non-tender of the redemption price. On account of such ruling, the appellate court no longer ruled on the issue of the constitutionality of Sec. 25 of P.D. 694 and on the validity of the Deeds of Assignment. Petitioners' motion for reconsideration having been denied by Resolution dated June 5, 2007, this present petition was filed.

Petitioners insist that Quisumbing made a valid tender of redemption because he did not have to tender the redemption prices due to, so they claim, PNB's outright refusal to accept or allow any redemption, and that he perfected a 'judicial redemption' following *Tioseco v. CA*.^[15] They assail the ruling of the trial court that spouses Silverio were accommodation mortgagors or direct debtors/mortgagors and that Sec. 25 of P.D. No. 694 applies to accommodation mortgagors, as well as the trial and appellate court's ruling that Sec. 25 is not unconstitutional despite its being violative, so petitioners contend, of the due process and equal protection clauses of the Constitution.

Petitioners maintain that Sec. 25 applies only to debtors-mortgagors, hence, the case at bar should have been governed by the general law on redemption – Sec. 6 of Republic Act No. 3135 *vis a vis* Rule 39, Sec. 30. In support of their position, they draw attention to the fact that all the certificates of sale state that the proceedings/sale were pursuant to an "extra-judicial foreclosure of real estate mortgage under RA 3135 as amended," without any mention whatsoever of P.D. No. 694. Petitioners thus conclude that Sec. 25 of P.D. No. 694 should be struck down for being void for vagueness; and that it is arbitrary and unreasonable because it grants a preferred position to PNB which may abuse to unjustly enrich itself at the expense of mortgagors, hence, violative of the right to due process.

At all events, they argue that assuming that Sec. 25 applies to accommodation mortgagors such as the spouses Silverio still, the redemption price would be based on the value of the properties foreclosed, not on the obligations of the debtor, as what PNB insists on doing.

In its Comment,^[16] PNB, averring that what petitioners are raising are questions of fact, maintains that the Deeds of Assignment are void for being against public policy because at the time they were executed, Quisumbing was already the lawyer not only of the spouses Silverio but also of Komatsu and the other companies, the properties of which were being foreclosed.

In its separate Comment,^[17] SLDC argues that the present petition, insofar as the Pasong Tamo property is concerned, is barred by *res judicata*, the Court in *Komatsu*

Industries (Phils.) Inc. v. Philippine National Bank and Santiago Land Development Corporation and Maximo Contreras, (Komatsu case)^[18] having declared PNB's extrajudicial foreclosure of the said property and eventual sale to SLDC valid. It adds that, since in G.R. No. 106194 or the "Intervention Case," it was held that a purchaser *pendente lite* "€ SLDC is bound by the outcome of the case instituted by the transferor "€ PNB, then Quisumbing, as transferee *pendente lite* of Komatsu's right to redeem the Pasong Tamo property, "must also necessarily be bound by the outcome of the *Komatsu case*" "€ and that, perforce, "if he cannot intervene, then neither can he be allowed to file or maintain a separate case."

Maintaining that Quisumbing's "judicial redemption" should not be allowed, SLDC contends that since redemption is inconsistent with the claim of invalidity of a foreclosure sale, then Komatsu's act of assigning its right of redemption to Quisumbing was incompatible with its earlier remedy of contesting the validity of PNB's foreclosure and is, therefore, prohibited.

SLDC further avers that Sec. 25 of PD No. 694 does not violate the due process clause, its provision requiring the mortgagors to pay the redemption price being in line with the purpose of the law, *viz* "to protect the investment of the government in the institution."

Aside from reiterating their previous arguments, petitioners, in their Consolidated Reply,^[19] refute SLDC's and PNB's arguments. They contend that the action is not barred by *res judicata* because in the *Komatsu case*, the Court "contemplated" that the issue of validity of the exercise of redemption would not be resolved in that case but in Civil Case No. 10513, and the reason why Quisumbing was not required to intervene in *Komatsu* was because he was not a party thereto, and the case involved annulment of the foreclosure sale, not the exercise of the right of redemption.

Petitioners further maintain that the issue of whether the assignment of rights made in Quisumbing's favor was barred for being against public policy (under Art. 1491^[5] of the Civil Code) can no longer be raised as an issue, respondents having failed to raise it in the proceedings below; and assuming *arguendo* that it had been raised, said provision would not apply, as what were assigned were merely the rights of redemption, not the properties themselves, and Quisumbing did not represent Komatsu or the other companies in the annulment of foreclosure proceedings.

In a Supplemental Petition^[20] filed on August 28, 2007, petitioners submit that the sale of the Philippine Government's remaining minority shares (12.28%) in the PNB on August 1, 2007 reinforces their argument that if Sec. 25 of P.D. No. 694 is made applicable to accommodation mortgagors, the same should be struck down for being unconstitutional, as it would then be violative of the equal protection clause. And they assert that if, indeed, the purpose of said provision is to protect the government's investment in PNB, then it has ceased to exist due to the privatization of said institution and, as such, Sec. 25 should be struck down.

The pivotal issue that needs to be resolved is whether the original plaintiff, Atty. Norberto J. Quisumbing, made a valid tender of redemption.

The Court rules in the negative.

Sec. 25 of P.D. No. 694 otherwise known as the Revised Charter of the Philippine National Bank enacted on May 8, 1975 provides:

Section 25. *Right of redemption of foreclosed property Right of possession during redemption period.* Within one year from the registration of the foreclosure sale of real estate, **the mortgagor shall have the right to redeem the property by paying all claims of the Bank against him on the date of the sale including all the costs and other expenses incurred by reason of the foreclosure sale and custody of the property, as well as charges and accrued interests.**

The Bank may take possession of the foreclosed property during the redemption period. When the Bank takes possession during such period, it shall be entitled to the fruits of the property with no obligation to account for them, the same being considered compensation for the interest that would otherwise accrue on the account. Neither shall the Bank be obliged to post a bond for the purpose of such possession. (Emphasis supplied)

On the other hand, under Act No. 3135, An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgages (which took effect on March 6, 1924), as amended by Act. No. 4118, redemption of extra-judicially foreclosed properties is undertaken 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 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. (Emphasis supplied)

And the pertinent provision of the Code of Civil Procedure, now Section 28 of Rule 39 of the Revised Rules of Civil Procedure, reads:

SEC. 28. *Time and manner of, and amounts payable on, successive redemptions; notice to be given and filed.* - The judgment obligor, or redemptioner, may redeem the property from the purchaser, at any time within one (1) year from the date of the registration of the certificate of sale, **by 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 purchase, and interest on such last named amount of the same rate; and if the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the judgment under**