

THIRD DIVISION

[G.R. No. 167420, June 05, 2009]

**ALLIED BANKING CORPORATION, PETITIONER, VS. RUPERTO
JOSE H. MATEO, REPRESENTED BY WARLITA MATEO, AS
ATTORNEY-IN-FACT, RESPONDENT.**

DECISION

PERALTA, J.:

Before the Court is a petition for review on *certiorari* filed by Allied Banking Corporation (petitioner) seeking to reverse the Decision^[1] dated October 21, 2004, as well as the Order^[2] dated February 10, 2005 of the Regional Trial Court (RTC), Branch 35, Santiago City, docketed as SCA No. 35-0145 for legal redemption with prayer for a temporary restraining order and preliminary injunction.

On February 19, 1996, Ruperto Jose Mateo (respondent) obtained a loan from petitioner in the amount of P950,000.00. To secure the payment of the loan, respondent executed in favor of petitioner a deed of real estate mortgage over a parcel of land registered in respondent's name under Transfer Certificate of Title (TCT) No. 236351 of the Register of Deeds of Isabela. He likewise executed a promissory note in the amount of P950,000.00. Subsequently, respondent incurred default in the payment of his loan prompting petitioner to cause the extrajudicial foreclosure of the mortgage constituted on the subject property. The property was sold at public auction for P1,531,474.53 with petitioner as the sole and highest bidder. The Certificate of Sale was issued to petitioner, and was registered with the Register of Deeds on July 21, 1999.

Respondent, through her attorney-in-fact, Warlita N. Mateo (Warlita), sent, on several dates, faxed letters to petitioner signifying his desire to redeem the foreclosed property for P1.1 million pesos.

On July 21, 2000, or on the last day of the period for redemption, respondent, represented by Warlita, filed a case for legal redemption with prayer for temporary restraining order and preliminary injunction with the RTC of Isabela.

On January 19, 2001, petitioner effected the consolidation of its ownership over the subject property and TCT No. 311043 was issued in its name on March 2, 2001.

During the pre-trial conference on September 18, 2002, respondent offered to redeem the property for the foreclosed amount of P1,531,474.53, but petitioner refused. Instead of continuing with the trial, the parties agreed to submit the case for summary judgment.

On October 21, 2004, the RTC rendered its Decision, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered in favor of the plaintiff and against the defendant, ALLOWING the plaintiff to redeem from the defendant the property now covered by TCT No. T-311043 in the name of the defendant, upon payment of the amount of P1,531,474.53, plus one (1) percent as interest for one (1) month only, and ORDERING the defendant to accept the tender of redemption of the plaintiff and to deliver the proper certificate of redemption to the latter and finally, ordering the defendant to indemnify the plaintiff P30,000.00 as attorney's fees and cost of the suit.^[3]

In so ruling, the RTC found that: (1) respondent had the right to redeem the foreclosed property from petitioner, as the one year period to redeem had not yet expired when respondent filed the instant case; (2) even prior to the filing of the case, respondent had sent petitioner several faxed letters to show his sincere desire to avail himself of the right to redeem the property from petitioner; (3) respondent already offered to pay the foreclosed price of P1,531,474.53 as in fact he had consigned P1.1 million in the Land Bank. The trial court also found that respondent began to exercise the right to redeem on August 10, 1999 when he, through Warlita, sent a letter to petitioner on his intention to redeem; thus, applying Section 28, Rule 39 of the Rules of Court, respondent should pay as redemption price the foreclosed amount of P1,531,474.53, plus one percent interest for the month that lapsed until August 10, 1999.

Petitioner filed a Motion for Reconsideration, which was denied in an Order^[4] dated February 10, 2005.

In denying the Motion for Reconsideration, the RTC ruled that respondent's offer of P1,531,474.53 made during the pre-trial conference already covered petitioner's bid price at the foreclosure auction sale, which already incorporated the interest, penalties, attorney's fees and other expenses of sale; that such purchase price should be the basis of the redemption price, plus interest at one percent, in order to afford respondent a greater chance to redeem the foreclosed property.

Dissatisfied, petitioner filed a petition for review on *certiorari* with the Court, alleging that:

THE LOWER COURT DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW AND WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT IN THAT:

I. It is considered sufficient tender and consignment the amount which was less than the price for which the property was bought and in the manner not in conformity with the law and settled jurisprudence.

II. It applied the provisions of Sec. 28, Rule 39 of the Rules of Court and Act No. 3135 in the computation of the redemption price even when the said basis has been superseded by Sec. 78 of the General Banking Act (now Section 47 of RA 8791).^[5]

Petitioner contends that: (1) the RTC erred in considering the various offers made by respondent to redeem the subject property for the amount of P1.1 million as sufficient tender of payment for purposes of redemption; (2) the tender to be

legally sufficient must be for the amount of the purchase price, plus the agreed interest rate on the principal obligation; (3) the RTC erred in considering the deposit of P1.1 million with Land Bank as sufficient consignation, since the amount should have been deposited in court and not anywhere else; (4) the offer to redeem in the amount of P1,531,474.53 was made only during the pre-trial conference, which was already way past the redemption period; and (5) the redemption price should be based on Section 47 of the General Banking Act.

In his Comment, respondent claims that the petition should be denied outright, because it raises questions of fact and not purely of law; that the issue as to the sufficiency or insufficiency of the amount tendered by respondent is a question of fact, as the Court should consider the factual evidence in relation to the computation of the purchase price paid by petitioner during the foreclosure sale and the price offered by respondent; that he offered to pay petitioner's purchase amount of P1,531,474.53 during the pre-trial conference; that he can still exercise the right of redemption over the subject property; and that a previous tender of payment and consignation is only proper but is not essential when the redemptioner exercises his right to redeem the foreclosed property through the filing of a judicial action within the period of redemption.

In its Reply, petitioner argues that the case was decided on stipulation of facts by the parties; thus, any appeal from a judgment based on stipulation of facts can only be on questions of law; that, whether under Section 28, Rule 39 of the Rules of Court or Section 47 of the General Banking Act, the minimum redemption amount is P1,531,474.53, which was the amount paid by petitioner during the foreclosure sale.

Preliminarily, the Court would first address the procedural matter raised by respondent: that the petition should be denied outright because it raises questions of fact and not purely of law. Respondent claims that the issue as to the sufficiency or insufficiency of the amount tendered by respondent is a question of fact, which could not be raised in an appeal by *certiorari* under Rule 45.

We are not persuaded.

Notably, it was already stipulated upon by the parties that respondent offered P1.1 million as redemption price before the filing of this action; thus, the issue is not the amount of redemption price, but the sufficiency of the amount offered by respondent that would warrant the redemption of the foreclosed property. This is a question of law as it calls for the correct application of law and jurisprudence on the matter, which is within the purview of Rule 45 of the Rules of Court.

The Court will now address the main issues presented, to wit:

- (1) Whether or not respondent still has the right to redeem the subject property; and
- (2) Whether or not Section 78 of the General Banking Act^[6] should be applied to the computation of the redemption price.

Section 6 of Act No. 3135,^[7] as amended by Act No. 4118, provides for a valid redemption, to wit:

SEC. 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 sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive,^[8] of the Code of Civil Procedure, insofar as these are not inconsistent with the provisions of this Act.

Considering that petitioner is a banking institution, the determination of the redemption price for the foreclosed property should be governed by Section 78 of the General Banking Act. *Union Bank of the Philippines v. Court of Appeals*,^[9] is instructive:

x x x Petitioner's contention that Section 78 of the General Banking Act governs the determination of the redemption price of the subject property is meritorious. In *Ponce de Leon v. Rehabilitation Finance Corporation*, this Court had occasion to rule that Section 78 of the General Banking Act had the effect of amending Section 6 of Act No. 3135 insofar as the redemption price is concerned when the mortgagee is a bank, as in this case, or a banking or credit institution. The apparent conflict between the provisions of Act No. 3135 and the General Banking Act was, therefore, resolved in favor of the latter, being a special and subsequent legislation. This pronouncement was reiterated in the case of *Sy v. Court of Appeals* where we held that the amount at which the foreclosed property is redeemable is the amount due under the mortgage deed, or the outstanding obligation of the mortgagor plus interest and expenses in accordance with Section 78 of the General Banking Act. It was, therefore, manifest error on the part of the Court of Appeals to apply in the case at bar the provisions of Section 30, Rule 39 of the Rules of Court in fixing the redemption price of the subject foreclosed property.

And Section 78 provides:

Sec. 78. In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real estate which is security for any loan granted before the passage of this Act or under the provisions of this Act, the mortgagor or debtor whose real property has been sold at public auction, judicially or extrajudicially, for the full or partial payment of an obligation to any bank, banking or credit institution, within the purview of this Act shall have the right, within one year after the sale of the real estate as a result of the foreclosure of the respective mortgage, to redeem the property by paying the amount fixed by the court in the order of execution, or the amount due under the mortgage deed, as the case may be, with interest thereon at the rate specified in the mortgage, and all the costs, and judicial and other expenses incurred by the bank or institution concerned by reason of the execution and sale and as a result of the custody of said property less the income received from the property.