

SECOND DIVISION

[G.R. No. 152359, May 21, 2004]

**DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS.
WEST NEGROS COLLEGE, INC., RESPONDENT.**

R E S O L U T I O N

TINGA, J.:

For resolution is the *Motion for Reconsideration* ^[1] dated November 26, 2002 filed by West Negros College, Inc. (West Negros) assailing the Court's *Decision* ^[2] dated October 28, 2002.

Briefly, the facts are as follows: ^[3]

On December 12, 1967, Bacolod Medical Center (BMC) obtained a loan from the Development Bank of the Philippines (DBP) in the amount of P2,400,000.00 secured by a mortgage on two (2) parcels of land, namely: Lots Nos. 1397-A and 1397-B-1 covered by Transfer Certificates of Title (TCT) Nos. T-25053 and T-29169, respectively. The mortgage was expressly constituted subject to the provisions of Republic Act No. 85 (R.A. 85) creating the Rehabilitation Finance Corporation, a predecessor agency of DBP.

For failure of BMC to pay the loan, DBP instituted on January 30, 1989 an extrajudicial foreclosure of mortgage under Act 3135. On August 24, 1989, the mortgaged properties were sold at public auction with DBP emerging as the highest and only bidder for the sum of P4,090,117.36. On August 25, 1989, the *Ex-Officio* Provincial Sheriff of Bacolod City executed the certificate of sale in favor of DBP. On July 11, 1990, the sale was registered in the Registry of Deeds as Entry No. 166752 and annotated on the TCTs of the mortgaged properties.

Prior to the expiration of the redemption period on July 11, 1991, BMC and the Bacolod branch office of DBP agreed to peg the redemption price at P21,500,000.00 representing the compromise settlement of the outstanding account subject to the approval of DBP's head office. BMC further resolved to pay an installment of 20% of the compromise amount, or P4,300,000.00, on or before August 31, 1991. After several extensions of the deadline to pay the installment, BMC finally settled the amount in three (3) separate payments.

In the meantime, on July 10, 1991, in the course of paying the 20% installment, BMC and West Negros executed a Deed of Assignment which assigned to the latter BMC's interests in the foreclosed properties and vested upon West Negros the right to redeem them. While acknowledging that redemption should be based on the outstanding loan obligation of BMC to DBP, West Negros demanded the reduction of the redemption price from P21,500,000.00 to P12,768,432.90 allegedly because of excessive interest charges.

On October 27, 1991, the head office of DBP rejected the compromise amount of P21,500,000.00 since the amount was way below the re-appraised value of the foreclosed parcels of land which stood at P28,895,500.00 as of May 31, 1991.

On November 8, 1991, West Negros requested the Ex-Officio Provincial Sheriff to issue the certificate of redemption in view of the payment to DBP of P4,300,000.00 representing 20% of the compromise amount, with one percent (1%) interest thereon including other expenses defrayed by DBP at the extrajudicial sale. The computation of the redemption price made by West Negros was based on Section 30, Rule 39 of the Rules of Court and Act 3135. The *Ex-Officio* Provincial Sheriff concurred with West Negros' basis for the redemption price but responded that the amount paid was still short of P358,128.58. In a letter of even date to the DBP, the *Ex-Officio* Provincial Sheriff informed DBP of the request for a certificate of redemption and the amount pegged for the full redemption of the foreclosed properties based on Section 30, Rule 39 of the Rules of Court, and requested the surrender of the TCTs covering the redeemed properties.

On November 12, 1991, West Negros settled the deficit of P358,128.58. The Sheriff then requested the Manager of DBP on November 12, 1991 to get the deposit in the amount of P358,128.58 and bring with him the owner's duplicate copies of the TCTs covering the subject properties.

In response, the DBP sent a letter dated November 14, 1991 to the Sheriff arguing that West Negros does not have any personality to enter into the picture and that whatever transaction the latter may have entered into with BMC does not bind DBP because the same was executed without its approval and express consent as mortgagee.^[4] DBP further objected to the issuance of the certificate of redemption and argued that the redemption price must be based on the charter of the DBP requiring payment of the amount owed as of the date of the foreclosure sale with interest on the total indebtedness at the rate agreed upon in the obligation. It also refused to hand over the TCTs of the foreclosed properties and caused the registration of its adverse claim thereon.

This prompted West Negros to file a petition against DBP with the RTC-Branch 50, Bacolod City, docketed as Cad. Case No. 2, GLRO CAD. REC. No. 55, for the surrender of the TCTs or, in the alternative, the cancellation of the existing TCTs and the issuance of new ones. West Negros alleged full payment of the redemption price under Section 30, Rule 39 of the Rules of Court and Act 3135. On the other hand, DBP claimed that proper redemption under its charter could only take place when the total outstanding loan had been satisfied.

The trial court found merit in the petition and ordered DBP to surrender the TCTs and, in case of failure to turn them over, instructed the Register of Deeds to issue new certificates of title for the foreclosed properties. Because DBP manifested that it was not relinquishing the documents, new TCTs were issued in the name of West Negros. On February 14, 1992, upon an *ex-parte* motion of West Negros, the trial court also cancelled the adverse claim and notice of *lis pendens* in favor of DBP. On April 28, 1992, it denied DBP's separate motions for reconsideration of the two (2) orders.

On appeal, the Court of Appeals held that the applicable legal provisions were

Section 30, Rule 39 of the Rules of Court and Act 3135 such that the redemption price must be the amount of purchase with one percent (1%) monthly interest thereon including other expenses defrayed by the purchaser at the extrajudicial sale. On February 21, 2002, a Special Division of five of the appellate court denied DBP's motion for reconsideration.

DBP raised the matter on *Petition for Review on Certiorari* before this Court. The bone of contention, as summarized by the Court, was how much a mortgagor must pay to redeem real property mortgaged to and foreclosed extrajudicially by the DBP, *i.e.*, whether the mortgagor must pay to the bank the entire amount he owed the latter on the date of the sale with interest on the total indebtedness at the rate agreed upon in the obligations, or whether it is enough for purposes of redemption that he reimburse the amount of purchase with one percent (1%) monthly interest thereon including other expenses defrayed by the purchaser at the extrajudicial sale.

In its *Decision*, the Court declared that "in redeeming the foreclosed property respondent West Negros College as assignee of Bacolod Medical Center should pay the balance of the amount owed by the latter to petitioner DBP with interest thereon at the rate agreed upon as of the date of the public auction on August 24, 1989."^[5] Accordingly, it granted the petition declaring as follows:

WHEREFORE, the instant Petition for Review is **GRANTED**. The 7 August 2001 *Decision* and the 21 February 2002 *Resolution* of the Court of Appeals in CA-GR CV No. 38277 are **REVERSED** and **SET ASIDE**. The appealed *Orders* of RTC-Br. 50 in CAD. Case No. 2, GLRO CAD. REC. No. 55, dated 7 February 1992, 14 February 1992 and 28 April 1992, ordering petitioner Development Bank of the Philippines through the Ex-Officio Provincial Sheriff to surrender the transfer certificates of title covering the foreclosed parcels of land and, in case of the failure to turn them over, instructing the Register of Deeds to issue new transfer certificates of title for the foreclosed properties, as it did issue new transfer certificates of title designated as TCT Nos. T-165261 and T-165262 in the name of West Negros College; canceling the adverse claim and notice *lis pendens* in favor of petitioner Development Bank of the Philippines; and denying the separate motions for reconsideration of petitioner Development Bank of the Philippines, are also **REVERSED** and **SET ASIDE**.

The Certificate of Redemption dated 13 November 1991 in favor of respondent West Negros College is **DECLARED VOID AND OF NO EFFECT**. Respondent is given however a grace period of sixty (60) calendar days from notice of the finality of this *Decision* within which to redeem the mortgaged properties (Lots Nos. 1397-A and 1397-B-1 originally covered by Transfer Certificates of Title Nos. T-25053 and T-29169, respectively, improvements thereon and other properties subject of the mortgage and the extrajudicial foreclosure) if respondent so desires by paying petitioner Development Bank of the Philippines the balance of the credit of Bacolod Medical Center (as assumed by respondent West Negros College under a deed of assignment) secured by the properties plus the expenses and the agreed rate of interest, to be computed as of the date of the public auction on 24 August 1989, unless

petitioner Development Bank of the Philippines has taken material possession of the properties in which case the proceeds of the properties shall compensate the interest but only during the period of their possession.

In the event that respondent West Negros College is not interested in redeeming the mortgaged properties at the statutory redemption price, or that the redemption period of sixty (60) days expires without any redemption having been undertaken or without a compromise agreement for such purpose having been reached and perfected, respondent West Negros College shall yield possession of the properties in question to petitioner Development Bank of the Philippines as TCT No. T-165261 for Lot No. 1397-A and TCT No. 165262 for Lot No. 1397-B-1 issued in the name of West Negros College are **DECLARED VOID** and **OF NO EFFECT** and the Register of Deeds of Bacolod City is **ORDERED TO ISSUE** new transfer certificates of title over the mortgaged properties in the name of the Development Bank of the Philippines. No Costs.^[6]

Contending that it is desirous of redeeming the subject properties, West Negros filed the instant *Motion for Reconsideration*^[7] dated November 26, 2002 on the main issue of how much the redemption price should be. The respondent asks the Court to determine the legality of the amount claimed by DBP as the total outstanding obligation considering that DBP allegedly compounded the interest due and imposed penalties on the principal amount and interest on expenses even as these were neither expressly agreed upon by the parties nor imposed from the time of judicial demand in accordance with Article 2212 of the Civil Code. These circumstances are, according to West Negros, violative of due process. Alternatively, West Negros asks the Court to remand the case to the lower court for determination of the exact amount to be paid. In support of its motion, West Negros attached copies of two (2) *Promissory Notes* (PNs) respectively dated July 19, 1966 and December 12, 1967 which allegedly support the mortgage contract. The PNs both impose an interest of 12% per annum on unpaid interests and amortizations.

The respondent further avers that DBP is estopped by its agreement to reduce the redemption amount to P21,500.000.00, acceptance of part of the redemption price and representation that BMC would be allowed to redeem the property. Finally, West Negros challenges the constitutionality of Executive Order No. 81 (E.O. 81),^[8] which governs the mortgage contract between DBP and BMC, as it allegedly violates the non-impairment clause of the Constitution by giving the DBP the unbridled authority to determine the amount West Negros should pay at the time of redemption.

In its *Comment to Respondent's Motion for Reconsideration Dated 26 November 2002* ^[9] dated March 10, 2003, DBP counters that the PNs attached to the **Motion for Reconsideration** are non-existent. Allegedly, the PN dated July 19, 1966 refers to an earlier loan granted by DBP to BMC, which had since been fully paid. On the other hand, the PN dated December 12, 1967 had been superseded by a supplemental document and another PN both dated January 6, 1975 which authorize the imposition of compounded interest, penalties and other charges upon the outstanding obligation.

DBP stresses that it cannot be deemed in estoppel by its acceptance of the amount