

THIRD DIVISION

[G.R. No. 141974, August 09, 2004]

**BPI FAMILY SAVINGS BANK, INC., PETITIONER, VS. SPS.
JANUARIO ANTONIO VELOSO AND NATIVIDAD VELOSO,
RESPONDENTS.**

D E C I S I O N

CORONA, J.:

Before us is a petition for review of the decision^[1] dated February 14, 2000 of the Court of Appeals affirming the decision of the Regional Trial Court, Branch 94, Quezon City,^[2] which upheld the validity of the extra-judicial foreclosure proceedings initiated by Family Bank and Trust Company (Family Bank) on the mortgaged properties of respondent spouses Januario Antonio Veloso and Natividad Veloso but allowed the latter to redeem the same properties.

On January 8, 1983, respondent spouses obtained a loan of P1,300,000 from petitioner's predecessor-in-interest Family Bank and Trust Company. To secure payment of the loan, respondent spouses executed in favor of the bank a deed of mortgage over three parcels of land, with improvements, registered in their names under TCT Nos. 272227, 272228 and 272229 of the Registry of Deeds of Quezon City.

On February 9, 1983, respondents, for value received, executed a promissory note for P1,300,000. Subsequently, however, respondents defaulted in the monthly installments due on their loan. When efforts to update the account failed, Family Bank instituted extra-judicial foreclosure proceedings on the respondents' mortgaged properties.

On July 1, 1985, the properties were sold at public auction with Family Bank as the highest bidder for P2,782,554.66.

On August 5, 1985, Family Bank assigned all its rights and interests in the foreclosed properties to petitioner BPI Family Bank, Inc. (BPI).

On August 28, 1985, the sheriff's certificate of sale was registered with the Registry of Deeds of Quezon City.

On July 24, 1986, respondents, through counsel, wrote BPI offering to redeem the foreclosed properties for P1,872,935. This was, however, rejected by petitioner.

On August 27, 1986, respondents filed in the RTC of Quezon City, Branch 94, a complaint for annulment of foreclosure, with consignation and prayer for damages. On motion of respondents, the trial court, in an order dated August 27, 1986, allowed respondents to deposit with the clerk of court the sum of P1,500,000

representing the redemption price. Thereafter, trial on the merits ensued.

Meanwhile, in Branch 76 of the Regional Trial Court of Quezon City, BPI was able to secure a writ of possession over the foreclosed properties. This prompted respondents to file with the Court of Appeals a petition for certiorari with preliminary injunction docketed as CA-G.R. SP No. 22681. On October 8, 1990, the Court of Appeals resolved to grant respondents' motion for preliminary mandatory injunction.

Eventually, however, in a decision promulgated on May 31, 1991, the Court of Appeals, in CA-G.R. SP No. 22681, resolved the issue of possession in favor of BPI and accordingly lifted the preliminary mandatory injunction it had earlier issued, denying altogether respondents' petition. From this decision, respondents came to this Court via a petition for review which was, however, denied in a resolution dated January 13, 1992. The resolution affirmed, in effect, petitioner's right to the possession of the subject properties.

On December 16, 1992, upon motion of respondents and despite the opposition of petitioner, Branch 94 ordered the release of P1,400,000 of the consigned amount to respondents, with the balance of P100,000 to take the place of the injunction bond to answer for whatever damages petitioner might suffer because of the issuance of the preliminary injunction (previously issued and later lifted) in favor of respondents.

Finally, on August 18, 1995, after almost a decade of protracted litigation, the trial court rendered a decision declaring the validity of the extra-judicial foreclosure of the mortgaged properties of respondents but allowed the redemption of the same at a redemption price of P2,140,000.

BPI elevated the matter to the Court of Appeals which affirmed the trial court's decision, with modification:

WHEREFORE, subject to the modification declaring P2,678,639.80 as the redemption price due the appellant, the decision appealed from is hereby AFFIRMED in all other respects.^[3]

Hence, the instant petition based on the following assigned errors:

I

THE HONORABLE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW AND THE APPLICABLE DECISIONS OF THIS HONORABLE COURT WHEN IT AFFIRMED THE DECISION OF THE TRIAL COURT AND ALLOWED THE RESPONDENTS TO REDEEM THE FORECLOSED PROPERTY.

II

ASSUMING FOR THE SAKE OF ARGUMENT, BUT WITHOUT ADMITTING, THAT THE HONORABLE COURT OF APPEALS DID NOT ERR IN AFFIRMING THE DECISION OF THE TRIAL COURT, NEVERTHELESS IT DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW AND THE APPLICABLE DECISIONS OF THIS HONORABLE COURT WHEN IT

FIXED THE REDEMPTION PRICE TO BE PAID BY RESPONDENTS TO PETITIONER AT ONLY P2,678,639.80 AND SHALL ONLY EARN 1% PER MONTH UNDER SECTION 28, RULE 39 OF THE 1997 RULES OF CIVIL PROCEDURE.

The fact is that, at the time of the foreclosure sale on July 1, 1985, respondent spouses Veloso had already defaulted on their loan to petitioner's predecessor-in-interest family bank. In a real estate mortgage, when the principal obligation is not paid when due, the mortgagee has the right to foreclose on the mortgage and to have the property seized and sold, and to apply the proceeds to the obligation.^[4] foreclosure is proper if the debtor is in default in the payment of his obligation.^[5] and in this case, the validity of the extra-judicial foreclosure on July 1, 1985 was confirmed by both the trial court and the court of appeals. We find no reason to question it.

The sole question therefore that remains to be resolved is: did respondent spouses comply with all the requirements for the redemption of the subject properties?

We answer in the negative.

The general rule in redemption is that it is not sufficient that a person offering to redeem manifests his desire to do so. The statement of intention must be accompanied by an actual and simultaneous tender of payment. This constitutes the exercise of the right to repurchase.^[6]

In several cases^[7] decided by the Court where the right to repurchase was held to have been properly exercised, there was an unequivocal tender of payment for the **full amount of the repurchase price**. Otherwise, the offer to redeem is ineffectual.^[8] *Bona fide* redemption necessarily implies a reasonable and valid tender of the entire repurchase price, otherwise the rule on the redemption period fixed by law can easily be circumvented. As explained by this Court in *Basbas vs. Entena*:^[9]

x x x the existence of the right of redemption operates to depress the market value of the land until the period expires, and to render that period indefinite by permitting the tenant to file a suit for redemption, with either party unable to foresee when final judgment will terminate the action, would render nugatory the period of two years fixed by the statute for making the redemption and virtually paralyze any efforts of the landowner to realize the value of his land. No buyer can be expected to acquire it without any certainty as to the amount for which it may be redeemed, so that he can recover at least his investment in case of redemption. In the meantime, the landowner's needs and obligations cannot be met. It is doubtful if any such result was intended by the statute, absent clear wording to that effect.

Consequently, in this case, the offer by respondents on July 24, 1986 to redeem the foreclosed properties for P1,872,935 and the subsequent consignment in court of P1,500,000 on August 27, 1986, while made within the period^[10] of redemption, was ineffective since the amount offered and actually consigned not only did not include the interest but was in fact also way below the P2,782,554.66 paid by the