

SECOND DIVISION

[G.R. No. 152359, October 28, 2002]

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

DECISION

BELLOSILLO, J.:

How much should a mortgagor pay to redeem a real property mortgaged to and foreclosed extrajudicially by the Development Bank of the Philippines? Must he 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 obligation, or is it enough for purposes of redemption that he reimburse the amount of purchase with one per cent (1%) monthly interest thereon including other expenses defrayed by the purchaser at the extrajudicial sale?

Bacolod Medical Center (BMC) was the registered owner of Lots Nos. 1397-A and 1397-B-1 covered by Transfer Certificates of Title Nos. T-25053 and T-29169, respectively. On 12 December 1967 BMC obtained a loan for building and operating a hospital from petitioner Development Bank of the Philippines (DBP) worth P2,400,000.00. The loan was secured by a mortgage on the two (2) parcels of land, the hospital building to be constructed thereon, and the medical equipment to be used for the intended hospital. The mortgage was expressly constituted subject to the provisions of RA 85 (1946) creating the Rehabilitation Finance Corporation, a predecessor agency of petitioner DBP. From the loan P1,935,200.00 was immediately applied to pay for the old accounts of BMC and only P464,800.00 was actually released in cash.

On 30 January 1989, for failure of BMC to pay the loan, DBP instituted an extrajudicial foreclosure of the mortgage under Act 3135 (1924).^[1] On 24 August 1989 the mortgaged properties were sold at public auction where DBP emerged as the highest and only bidder for the sum of P4,090,117.36. As of the date of the public auction, the outstanding loan balance of BMC was P32,526,133.62. On 25 August 1989 the ex-officio Provincial Sheriff of Bacolod City executed the certificate of sale in favor of DBP; on 11 July 1990 the sale was registered in the Registry of Deeds as Entry No. 166752 annotated on the transfer certificates of title of the mortgaged properties.

Prior to the expiration of the redemption period on 11 July 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, and BMC further resolved to pay an installment of twenty percent (20%) of the compromise amount, or P4,300,000.00, on or before 31 August 1991. The agreement was however made subject to the approval of the head office of DBP. After several extensions of the deadline to pay the installment, BMC finally settled the amount in three (3) separate payments.

On 10 July 1991, during the process of paying for the twenty percent (20%) installment, BMC and respondent West Negros College executed a "Deed of Assignment" which assigned to the latter the interests of BMC in the properties foreclosed by petitioner DBP and vested upon the assignee the right to redeem them. On 27 October 1991, while acknowledging that redemption should be based on the outstanding loan obligation of BMC to petitioner, West Negros College demanded the reduction of the redemption price from P21,500,000.00 to P12,768,432.90 allegedly because of excessive interest charges.

On 27 October 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 at P28,895,500.00 as of 31 May 1991.

On 8 November 1991 respondent West Negros College requested the Ex-Officio Provincial Sheriff to issue the certificate of redemption in view of the payment to petitioner DBP of the amount of P4,300,000.00 comprising the amount of purchase with one per cent (1%) monthly interest thereon including other expenses defrayed by DBP at the extrajudicial sale. The computation of the redemption price made by West Negros College was based on Sec. 30, Rule 39 of the *Rules of Court*^[2] and Act 3135.^[3] The Ex-Officio Provincial Sheriff concurred with respondent's 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 petitioner of the request for a certificate of redemption and the amount pegged for the full redemption of the foreclosed properties based on Sec. 30, Rule 39 of the *Rules of Court*, and requested the surrender of the transfer certificates of title covering the redeemed properties.

On 12 November 1991 West Negros College settled the deficit of P358,128.58. On 14 November 1991 DBP 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. DBP also refused to hand over the transfer certificates of title of the foreclosed properties. On 3 December 1991 possession of the foreclosed properties was vested in West Negros College. On 5 December 1991 petitioner DBP caused the registration of its adverse claim on the foreclosed properties.

On 10 December 1991 West Negros College filed a petition with RTC-Br. 50, Bacolod City against DBP, docketed as Cad. Case No. 2, GLRO CAD. REC. No. 55, for the surrender of the transfer certificates of title covering the foreclosed properties or in the alternative the cancellation of the existing certificates of title and the issuance of new ones. West Negros College alleged full payment of the redemption price under Sec. 30, Rule 39 of the *Rules of Court* and Act 3135, i.e., the amount of purchase with one per cent (1%) monthly interest thereon including other expenses defrayed by the purchaser at the extrajudicial sale. Petitioner DBP, on the other hand, claimed that proper redemption under its charter could only take place when the total outstanding loan had been satisfied. On 12 December 1991 DBP asked for the annotation of a notice of *lis pendens* on the certificates of title in question.

On 7 February 1992 the trial court found merit in the petition and ordered the DBP through the Ex-Officio Provincial Sheriff to surrender the transfer certificates of title covering the foreclosed parcels of land and, in case of failure to turn them over, instructed the Register of Deeds to issue new transfer certificates of title for the

foreclosed properties.^[4] Because DBP manifested that it was not relinquishing the documents, new transfer certificates of title over the foreclosed parcels of land, designated as TCT Nos. T-165262 and T-165261, were issued in the name of West Negros College. On 14 February 1992, upon an *ex-parte* motion of West Negros College, the trial court also canceled the adverse claim and notice *lis pendens* in favor of DBP.^[5] On 28 April 1992 the trial court denied DBP's separate motions for reconsideration of the two (2) orders.^[6]

Petitioner DBP appealed the adverse orders of the trial court to the Court of Appeals docketed as CA-GR CV No. 38277. The contention in essence was that redemption could take place only if West Negros College settled the total outstanding obligation of BMC in favor of DBP. West Negros College argued otherwise claiming that according to Act 3135 in relation to Sec. 30, Rule 39 of the *Rules of Court* and the rulings in *Co v. Philippine National Bank*^[7] and *Philippine National Bank v. Court of Appeals*^[8] it only had to pay the purchase price at the foreclosure sale plus interests and other charges to effect redemption of the foreclosed properties which it had already done.

On 7 August 2001 the Court of Appeals denied the appeal of DBP and ruled that the applicable legal provisions were Sec. 30, Rule 39 of the *Rules of Court* and Act 3135 as interpreted by *Philippine National Bank v. Court of Appeals*^[9] so that the redemption price must be the amount of purchase with one per cent (1%) monthly interest thereon including other expenses defrayed by the purchaser at the extrajudicial sale.^[10] On 21 February 2002 a Special Division of Five of the appellate court denied the motion for reconsideration of the *Decision*,^[11] hence, this petition.

The petition is meritorious. It has long been settled that where the real property is mortgaged to and foreclosed judicially or extrajudicially by the Development Bank of the Philippines, the right of redemption may be exercised only by paying to "*the Bank all the amount he owed the latter on the date of the sale, with interest on the total indebtedness at the rate agreed upon in the obligation from said date, unless the bidder has taken material possession of the property or unless this had been delivered to him, in which case the proceeds of the property shall compensate the interest.*"^[12] This rule applies whether the foreclosed property is sold to the DBP or another person at the public auction, provided of course that the property was mortgaged to DBP.^[13] Where the property is sold to persons other than the mortgagee, the procedure is for the DBP "*in case of redemption, [to] return to the bidder the amount it received from him as a result of the auction sale with the corresponding interest paid by the debtor.*"^[14]

The foregoing rule is embodied consistently in the charters of petitioner DBP and its predecessor agencies. Section 31 of CA 459 creating the Agricultural and Industrial Bank explicitly set the redemption price at the total indebtedness plus contractual interest as of the date of the auction sale.^[15] Under RA 85 the powers vested in and the duties conferred upon the Agricultural and Industrial Bank by CA 459 as well as its capital, assets, accounts, contracts, and choses in action were transferred to the Rehabilitation Finance Corporation.^[16] It has been held that among the salutary provisions of CA 459 ceded to the Rehabilitation Finance Corporation by RA 85 was Sec. 31 defining the manner of redeeming properties mortgaged with the corporation.^[17] Subsequently, by virtue of RA 2081 (1958), the powers, assets,

liabilities and personnel of the Rehabilitation Finance Corporation under RA 85 and CA 459, particularly Sec. 31 thereof, were transferred to petitioner DBP.^[18] Significantly, Sec. 31 of CA 459 has been reenacted substantially in Sec. 16 of the present charter of the DBP, i.e., EO 81 (1986) as amended by RA 8523 (1998).^[19]

Development Bank of the Philippines v. Court of Appeals notes the impressive consistency of the successive charters of the DBP with respect to the manner of redeeming properties mortgaged to it –

Prior to the enactment of EO 81, the redemption price for property foreclosed by the Development Bank of the Philippines (DBP), whether judicially or extrajudicially, was determined by Commonwealth Act No. 459 (CA 459), which contained a provision substantially similar to Section 16 of EO 81 insofar as the redemption price was concerned x x x x Thus, in *DBP v. Mirang* [66 SCRA 141 (1975)], the Court held that appellant could redeem the subject property by paying the entire amount he owed to the Bank on the date of the foreclosure sale, with interest thereon at the rate agreed upon, pursuant to Section 31 of CA 459. The ruling herein was reiterated by the Court in the more recent case of *Dulay v. Cariaga* [123 SCRA 794 (1983)]. In the earlier case of *Nepomuceno v. Rehabilitation Finance Corporation* [110 Phil 42 (1960)], the Court explained that Section 31 of CA 459, being a special law applicable only to properties mortgaged to the Rehabilitation Finance Corporation - the predecessor of DBP - should prevail over Section 6 of Act No. 3135, which is a more general law applicable to all mortgaged properties extrajudicially foreclosed, regardless of the mortgagee.^[20]

In *Development Bank of the Philippines v. Jimenez* this Court clarified the proper applications of Sec. 31 of CA 459 and Sec. 30, Rule 39 of the Rules of Court^[21] when we held that "*Section 31 of Commonwealth Act No. 459, and not Section 26, Rule 39, of the Rules of Court, is applicable in case of redemption of real estate mortgaged to the DBP to secure a loan. As such, the redemption price to be paid by the mortgagor or debtor to the DBP is 'all the amount he owes the latter on the date of the sale, with interest on the total indebtedness at the rate agreed upon,' and not merely the amount paid for by the purchaser at the public auction, pursuant to Section 26, Rule 39, of the Rules of Court.*"^[22] Clearly the redemption of properties mortgaged with the Development Bank of the Philippines and foreclosed either judicially or extrajudicially is governed by special laws which provide for the payment of all the amounts owed by the debtor. This special protection given to a government lending institution is not accorded to judgment creditors in ordinary civil actions.^[23]

It is worth noting that the mortgage contract between petitioner DBP and Bacolod Medical Center as assignor of respondent West Negros College was expressly constituted subject to the provisions of RA 85 which by explicit reference include Sec. 31 of CA 459 requiring for purposes of redemption the payment of all the amount the mortgagor owed to DBP, with interest on the total indebtedness at the rate agreed upon in the obligation, reckoned from the date of the public auction. Respondent cannot evade the application of this provision because it is part of its undertaking as assignee of the mortgagor Bacolod Medical Center.