

659 Phil. 126

THIRD DIVISION

[G.R. No. 165617, February 25, 2011]

**SUPREME TRANSLINER, INC., MOISES C. ALVAREZ AND
PAULITA S. ALVAREZ, PETITIONERS, VS. BPI FAMILY SAVINGS
BANK, INC., RESPONDENT.**

[G.R. No. 165837]

**BPI FAMILY SAVINGS BANK, INC., PETITIONER, VS. SUPREME
TRANSLINER, INC., MOISES C. ALVAREZ AND PAULITA S.
ALVAREZ, RESPONDENTS.**

DECISION

VILLARAMA, JR., J.:

This case involves the question of the correct redemption price payable to a mortgagee bank as purchaser of the property in a foreclosure sale.

On April 24, 1995, Supreme Transliner, Inc. represented by its Managing Director, Moises C. Alvarez, and Paulita S. Alvarez, obtained a loan in the amount of P9,853,000.00 from BPI Family Savings Bank with a 714-square meter lot covered by Transfer Certificate of Title No. T-79193 in the name of Moises C. Alvarez and Paulita S. Alvarez, as collateral.^[1]

For non-payment of the loan, the mortgage was extrajudicially foreclosed and the property was sold to the bank as the highest bidder in the public auction conducted by the Office of the Provincial Sheriff of Lucena City. On August 7, 1996, a Certificate of Sale^[2] was issued in favor of the bank and the same was registered on October 1, 1996.

Before the expiration of the one-year redemption period, the mortgagors notified the bank of their intention to redeem the property. Accordingly, the following Statement of Account^[3] was prepared by the bank indicating the total amount due under the mortgage loan agreement:

X X X X

Balance of Principal	P 9,551,827.64
Add: Interest Due	1,417,761.24
Late Payment Charges	155,546.25
MRI	0.00
Fire Insurance	0.00
Foreclosure Expenses	<u>155,817.23</u>
Sub-total	P 11,280,952.36
Less: Unapplied Payment	<u>908,241.01</u>
Total Amount Due As of 08/07/96 (Auction Date)	10,372,711.35
Add: Attorney's Fees (15%)	1,555,906.70
Liquidated Damages (15%)	1,555,906.70
Interest on P 10,372,711.35 from 08/07/96 to 04/07/97 (243 days) at 17.25% p.a.	1,207,772.58

x x x x

Asset Acquired Expenses:

Documentary Stamps	155,595.00
Capital Gains Tax	518,635.57
Foreclosure Fee	207,534.23
Registration and Filing Fee	23,718.00
Add'l. Registration & Filing Fee	<u>660.00</u>
	906,142.79
Interest on P 906,142.79 from 08/07/96 to 04/07/97 (243 days) at 17.25% p.a.	105,509.00
Cancellation Fee	<u>300.00</u>
Total Amount Due As of 04/07/97 (Subject to Audit)	P <u>15,704,249.12</u>

x x x x

The mortgagors requested for the elimination of liquidated damages and reduction of attorney's fees and interest (1% per month) but the bank refused. On May 21, 1997, the mortgagors redeemed the property by paying the sum of P15,704,249.12. A Certificate of Redemption^[4] was issued by the bank on May 27, 1997.

On June 11, 1997, the mortgagors filed a complaint against the bank to recover the allegedly unlawful and excessive charges totaling P5,331,237.77, with prayer for damages

and attorney's fees, docketed as Civil Case No. 97-72 of the Regional Trial Court of Lucena City, Branch 57.

In its Answer with Special and Affirmative Defenses and Counterclaim, the bank asserted that the redemption price reflecting the stipulated interest, charges and/or expenses, is valid, legal and in accordance with documents duly signed by the mortgagors. The bank further contended that the claims are deemed waived and the mortgagors are already estopped from questioning the terms and conditions of their contract.

On September 30, 1997, the bank filed a motion to set the case for hearing on the special and affirmative defenses by way of motion to dismiss. The trial court denied the motion on January 8, 1998 and also denied the bank's motion for reconsideration. The bank elevated the matter to the Court of Appeals (CA-G.R. SP No. 47588) which dismissed the petition for certiorari on February 26, 1999.

On February 14, 2002, the trial court rendered its decision^[5] dismissing the complaint and the bank's counterclaims. The trial court held that plaintiffs-mortgagors are bound by the terms of the mortgage loan documents which clearly provided for the payment of the following interest, charges and expenses: 18% p.a. on the loan, 3% post-default penalty, 15% liquidated damages, 15% attorney's fees and collection and legal costs. Plaintiffs-mortgagors' claim that they paid the redemption price demanded by the defendant bank under extreme pressure was rejected by the trial court since there was active negotiation for the final redemption price between the bank's representatives and plaintiffs-mortgagors who at the time had legal advice from their counsel, together with Orient Development Banking Corporation which committed to finance the redemption.

According to the trial court, plaintiffs-mortgagors are estopped from questioning the correctness of the redemption price as they had freely and voluntarily signed the letter-agreement prepared by the defendant bank, and along with Orient Bank expressed their conformity to the terms and conditions therein, thus:

May 14, 1997

ORIENT DEVELOPMENT BANKING CORPORATION

7th Floor Ever Gotesco Corporate Center
C.M. Recto Avenue corner Matapang Street
Manila

Attention: MS. AIDA C. DELA ROSA
Senior Vice-President

Gentlemen:

This refers to your undertaking to settle the account of SUPREME TRANS LINER, INC. and spouses MOISES C. ALVAREZ and PAULITA S. ALVAREZ, covering the real estate property located in the Poblacion, City of Lucena under TCT No. T-79193 which was foreclosed by BPI FAMILY SAVINGS BANK, INC.

With regard to the proposed refinancing of the account, we interpose no objection to the annotation of your mortgage lien thereon subject to the following conditions:

1. That all expenses for the registration of the annotation of mortgage and other incidental registration and cancellation expenses shall be borne by the borrower.
2. That you will recognize our mortgage liens as first and superior until the loan with us is fully paid.
3. That you will annotate your mortgage lien and pay us the full amount to close the loan within five (5) working days from the receipt of the titles. If within this period, you have not registered the same and paid us in full, you will immediately and unconditionally return the titles to us without need of demand, free from liens/encumbrances other than our lien.
4. That in case of loss of titles, you will undertake and shoulder the cost of re-issuance of a new owner's titles.
5. That we will issue the Certificate of Redemption **after full payment of P15,704,249.12. representing the outstanding balance of the loan as of May 15, 1997 including interest and other charges thereof** within a period of five (5) working days after clearance of the check payment.
6. That we will release the title and the Certificate of Redemption and other pertinent papers only to your authorized representative with complete authorization and identification.
7. That all expenses related to the cancellation of your annotated mortgage lien should the Bank be not fully paid on the period above indicated shall be charged to you.

If you find the foregoing conditions acceptable, please indicate your conformity on the space provided below and return to us the duplicate copy.

Very truly yours,

BPI FAMILY BANK

BY:

(SGD.) LOLITA C.
CARRIDO
Manager

C O N F O R M E :

ORIENT DEVELOPMENT BANKING CORPORATION

(SGD.) AIDA C. DELA ROSA
Senior Vice President

C O N F O R M E :

SUPREME TRANS LINER, INC.

(SGD.) MOISES C. ALVAREZ/PAULITA S. ALVAREZ
Mortgagors^[6]
(Underscoring in the original; emphasis supplied.)

As to plaintiffs-mortgagors' contention that the amounts representing attorney's fees and liquidated damages were already included in the P10,372,711.35 bid price, the trial court said this was belied by their own evidence, the Statement of Account showing the breakdown of the redemption price as computed by the defendant bank.

The mortgagors appealed to the CA (CA-G.R. CV No. 74761) which, by Decision^[7] dated April 6, 2004 reversed the trial court and decreed as follows:

WHEREFORE, foregoing considered, the appealed decision is hereby REVERSED and SET ASIDE. A new one is hereby entered as follows:

1. Plaintiffs-appellants' complaint for damages against defendant-appellee is hereby REINSTATED;
2. Defendant-appellee is hereby ORDERED to return to plaintiffs-appellees (*sic*) the invalidly collected amount of P3,111,813.40 plus six (6) percent legal interest from May 21, 1997 until fully returned;
3. Defendant-appellee is hereby ORDERED to pay plaintiffs-appellees (*sic*) the amount of P100,000.00 as moral damages, P100,000.00 as exemplary

- damages and P100,000.00 as attorney's fees;
4. Costs against defendant-appellee.

SO ORDERED.^[8]

The CA ruled that attorney's fees and liquidated damages were already included in the bid price of P10,372,711.35 as per the recitals in the Certificate of Sale that said amount was paid to the foreclosing mortgagee to satisfy not only the principal loan but also "interest and penalty charges, cost of publication and expenses of the foreclosure proceedings." These "penalty charges" consist of 15% attorney's fees and 15% liquidated damages which the bank imposes as penalty in cases of violation of the terms of the mortgage deed. The total redemption price thus should only be P12,592,435.72 and the bank should return the amount of P3,111,813.40 representing attorney's fees and liquidated damages. The appellate court further stated that the mortgagors cannot be deemed estopped to question the propriety of the charges because from the very start they had repeatedly questioned the imposition of attorney's fees and liquidated damages and were merely constrained to pay the demanded redemption price for fear that the redemption period will expire without them redeeming their property.^[9]

By Resolution^[10] dated October 12, 2004, the CA denied the parties' respective motions for reconsideration.

Hence, these petitions separately filed by the mortgagors and the bank.

In G.R. No. 165617, the petitioners-mortgagors raise the single issue of whether the foreclosing mortgagee should pay capital gains tax upon execution of the certificate of sale, and if paid by the mortgagee, whether the same should be shouldered by the redemptioner. They specifically prayed for the return of all asset-acquired expenses consisting of documentary stamps tax, capital gains tax, foreclosure fee, registration and filing fee, and additional registration and filing fee totaling P906,142.79, with 6% interest thereon from May 21, 1997.^[11]

On the other hand, the petitioner bank in G.R. No. 165837 assails the CA in holding that -

1. ... the Certificate of Sale, the bid price of P10,372,711.35 includes penalty charges and as such for purposes of computing the redemption price petitioner can no longer impose upon the private respondents the penalty charges in the form of 15% attorney's fees and the 15% liquidated damages in the aggregate amount of P3,111,813.40, although the evidence presented by the parties show

otherwise.

2. ... private respondents cannot be considered to be under estoppel to question the propriety of the aforestated penalty charges despite the fact that, as found by the Honorable Trial Court, "there was very active negotiation between the parties in the computation of the redemption price" culminating into the signing freely and voluntarily by the petitioner, the private respondents and Orient Bank, which financed the redemption of the foreclosed property, of Exhibit "3", wherein they mutually agreed that the redemption price is in the sum of P15,704,249.12.

3. ... petitioner [to] pay private respondents damages in the aggregate amount of P300,000.00 on the ground that the former acted in bad faith in the imposition upon them of the aforestated penalty charges, when in truth it is entitled thereto as the law and the contract expressly provide and that private respondents agreed to pay the same.^[12]

On the correct computation of the redemption price, Section 78 of Republic Act No. 337, otherwise known as the General Banking Act, governs in cases where the mortgagee is a bank.^[13] Said provision reads:

SEC. 78. x x x 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.** x x x (Emphasis supplied.)

Under the Mortgage Loan Agreement,^[14] petitioners-mortgagors undertook to pay the attorney's fees and the costs of registration and foreclosure. The following contract terms would show that the said items are separate and distinct from the bid price which

represents only the outstanding loan balance with stipulated interest thereon.

23. Application of Proceeds of Foreclosure Sale. The proceeds of sale of the mortgaged property/ies shall be applied as follows:

- a) To the payment of the expenses and cost of foreclosure and sale, including the attorney's fees as herein provided;
- b) To the satisfaction of all interest and charges accruing upon the obligations herein and hereby secured.
- c) To the satisfaction of the principal amount of the obligations herein and hereby secured.
- d) To the satisfaction of all other obligations then owed by the Borrower/Mortgagor to the Bank or any of its subsidiaries/affiliates such as, but not limited to BPI Credit Corporation; or to Bank of the Philippine Islands or any of its subsidiaries/affiliates such as, but not limited to BPI Leasing Corporation, BPI Express Card Corporation, BPI Securities Corporation and BPI Agricultural Development Bank; and
- e) The balance, if any, to be due to the Borrower/Mortgagor.

x x x x

31. Attorney's Fees: In case the Bank should engage the services of counsel to enforce its rights under this Agreement, the Borrower/Mortgagor shall pay an amount equivalent to fifteen (15%) percent of the total amount claimed by the Bank, which in no case shall be less than P2,000.00, Philippine currency, plus costs, collection expenses and disbursements allowed by law, all of which shall be secured by this mortgage.^[15]

Additionally, the Disclosure Statement on Loan/Credit Transaction^[16] also duly signed by the petitioners-mortgagors provides:

10. ADDITIONAL CHARGES IN CASE CERTAIN STIPULATIONS ARE NOT MET BY THE BORROWER

- a. Post Default Penalty 3.00% per month

- b. Attorney's Services 15% of sum due but not less than P2,000.00
- c. Liquidated Damages 15% of sum due but not less than P10,000.00
- d. Collection & Legal Cost As provided by the Rules of Court
- e. Others (Specify)

As correctly found by the trial court, that attorney's fees and liquidated damages were not yet included in the bid price of P10,372,711.35 is clearly shown by the Statement of Account as of April 4, 1997 prepared by the petitioner bank and given to petitioners-mortgagors. On the other hand, par. 23 of the Mortgage Loan Agreement indicated that asset acquired expenses were to be added to the redemption price as part of "costs and other expenses incurred" by the mortgagee bank in connection with the foreclosure sale.

Coming now to the issue of capital gains tax, we find merit in petitioners-mortgagors' argument that there is no legal basis for the inclusion of this charge in the redemption price. Under Revenue Regulations (RR) No. 13-85 (December 12, 1985), every sale or exchange or other disposition of real property classified as capital asset under Section 34(a) [17] of the Tax Code shall be subject to the final capital gains tax. The term sale includes *pacto de retro* and other forms of conditional sale. Section 2.2 of Revenue Memorandum Order (RMO) No. 29-86 (as amended by RMO No. 16-88 and as further amended by RMO Nos. 27-89 and 6-92) states that these conditional sales "necessarily include mortgage foreclosure sales (judicial and extrajudicial foreclosure sales)." Further, for real property foreclosed by a bank on or after September 3, 1986, the capital gains tax and documentary stamp tax must be paid before title to the property can be consolidated in favor of the bank. [18]

Under Section 63 of Presidential Decree No. 1529 otherwise known as the Property Registration Decree, if no right of redemption exists, the certificate of title of the mortgagor shall be cancelled, and a new certificate issued in the name of the purchaser. But where the right of redemption exists, the certificate of title of the mortgagor shall not be cancelled, but the certificate of sale and the order confirming the sale shall be registered by brief memorandum thereof made by the Register of Deeds upon the certificate of title. In the event the property is redeemed, the certificate or deed of redemption shall be filed with the Register of Deeds, and a brief memorandum thereof shall be made by the Register of Deeds on the certificate of title.

It is therefore clear that in foreclosure sale, there is no actual transfer of the mortgaged real property until after the expiration of the one-year redemption period as provided in Act No. 3135 and title thereto is consolidated in the name of the mortgagee in case of non-redemption. In the interim, the mortgagor is given the option whether or not to redeem the real property. The issuance of the Certificate of Sale does not by itself transfer ownership. [19]

RR No. 4-99 issued on March 16, 1999, further amends RMO No. 6-92 relative to the payment of Capital Gains Tax and Documentary Stamp Tax on extrajudicial foreclosure sale of capital assets initiated by banks, finance and insurance companies.

SEC. 3. CAPITAL GAINS TAX. -

(1) **In case the mortgagor exercises his right of redemption within one year from the issuance of the certificate of sale, no capital gains tax shall be imposed** because no capital gains has been derived by the mortgagor and no sale or transfer of real property was realized. x x x

(2) In case of non-redemption, the capital gains [tax] on the foreclosure sale imposed under Secs. 24(D)(1) and 27(D)(5) of the Tax Code of 1997 shall become due based on the bid price of the highest bidder but only upon the expiration of the one-year period of redemption provided for under Sec. 6 of Act No. 3135, as amended by Act No. 4118, and shall be paid within thirty (30) days from the expiration of the said one-year redemption period.

SEC. 4. DOCUMENTARY STAMP TAX. -

(1) In case the mortgagor exercises his right of redemption, the transaction **shall only be subject to the P15.00 documentary stamp tax** imposed under Sec. 188 of the Tax Code of 1997 because no land or realty was sold or transferred for a consideration.

(2) In case of non-redemption, the corresponding documentary stamp tax shall be levied, collected and paid by the person making, signing, issuing, accepting, or transferring the real property wherever the document is made, signed, issued, accepted or transferred where the property is situated in the Philippines. x x x (Emphasis supplied.)

Although the subject foreclosure sale and redemption took place before the effectivity of RR No. 4-99, its provisions may be given retroactive effect in this case.

Section 246 of the NIRC of 1997 states:

SEC. 246. Non-Retroactivity of Rulings. - Any revocation, modification, or reversal of any of the rules and regulations promulgated in accordance with the

preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application **if the revocation, modification, or reversal will be prejudicial to the taxpayers**, except in the following cases:

- (a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue;
- (b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
- (c) where the taxpayer acted in bad faith.

In this case, the retroactive application of RR No. 4-99 is more consistent with the policy of aiding the exercise of the right of redemption. As the Court of Tax Appeals concluded in one case, RR No. 4-99 "has curbed the inequity of imposing a capital gains tax even before the expiration of the redemption period [since] there is yet no transfer of title and no profit or gain is realized by the mortgagor at the time of foreclosure sale but only upon expiration of the redemption period."^[20] In his commentaries, De Leon expressed the view that while revenue regulations as a general rule have no retroactive effect, if the revocation is due to the fact that the regulation is erroneous or contrary to law, such revocation shall have retroactive operation as to affect past transactions, because a wrong construction of the law cannot give rise to a vested right that can be invoked by a taxpayer.^[21]

Considering that herein petitioners-mortgagors exercised their right of redemption before the expiration of the statutory one-year period, petitioner bank is not liable to pay the capital gains tax due on the extrajudicial foreclosure sale. There was no actual transfer of title from the owners-mortgagors to the foreclosing bank. Hence, the inclusion of the said charge in the total redemption price was unwarranted and the corresponding amount paid by the petitioners-mortgagors should be returned to them.

WHEREFORE, premises considered, both petitions are **PARTLY GRANTED**.

In G.R. No. 165617, BPI Family Savings Bank, Inc. is hereby ordered to **RETURN** the amounts representing capital gains and documentary stamp taxes as reflected in the Statement of Account To Redeem as of April 7, 1997, to petitioners Supreme Transliner, Inc., Moises C. Alvarez and Paulita Alvarez, and to retain only the sum provided in RR No. 4-99 as documentary stamps tax due on the foreclosure sale.

In G.R. No. 165837, petitioner BPI Family Savings Bank, Inc. is hereby declared entitled

to the attorney's fees and liquidated damages included in the total redemption price paid by Supreme Transliner, Inc., Moises C. Alvarez and Paulita Alvarez. The sums awarded as moral and exemplary damages, attorney's fees and costs in favor of Supreme Transliner, Inc., Moises C. Alvarez and Paulita Alvarez are **DELETED**.

The Decision dated April 6, 2004 of the Court of Appeals in CA-G.R. CV No. 74761 is accordingly **MODIFIED**.

SO ORDERED.

Brion,^{*} (*Chairperson*), *Bersamin*, *Abad*,^{**} and *Sereno, JJ.*, concur.

^{*} Designated Acting Chairperson per Special Order No. 925 dated January 24, 2011.

^{**} Designated additional member per Special Order No. 926 dated January 24, 2011.

[1] Records, pp. 48-52.

[2] *Id.* at 9.

[3] *Id.* at 14.

[4] *Id.* at 18.

[5] *Id.* at 393-401. Penned by Judge Rafael R. Lagos.

[6] *Id.* at 46-47.

[7] *Rollo* (G.R. No. 165617), pp. 23-36. Penned by Associate Justice Eugenio S. Labitoria and concurred in by Associate Justices Mercedes Gozo-Dadole and Rosmari D. Carandang.

[8] *Id.* at 36.

[9] *Id.* at 30-34.

[10] *Id.* at 41-42. Penned by Associate Justice Eugenio S. Labitoria and concurred in by Associate Justices Edgardo P. Cruz and Rosmari D. Carandang.

[11] *Id.* at 11, 15 and 18.

[12] *Rollo* (G.R. No. 165837), pp. 13-14.

[13] *Tecklo v. Rural Bank of Pamplona, Inc.*, G.R. No. 171201, June 18, 2010, 621 SCRA 262, 273, citing *Heirs of Norberto J. Quisumbing v. Philippine National Bank*, G.R. No. 178242, January 20, 2009, 576 SCRA 762, 772; *Union Bank of the Philippines v. Court of Appeals*, G.R. No. 134068, June 25, 2001, 359 SCRA 480, 490, citing *Ponce de Leon v. Rehabilitation Finance Corporation*, No. L-24571, December 18, 1970, 36 SCRA 289 and *Sy v. Court of Appeals*, G.R. No. 83139, April 12, 1989, 172 SCRA 125.

[14] *Records*, pp. 48-51.

[15] *Id.* at 50.

[16] *Id.* at 45.

[17] Now Sec. 39(A) of the National Internal Revenue Code of 1997.

SEC. 39. **Capital Gains and Losses.** -

(A) *Definitions.* - As used in this Title -

(1) *Capital Assets.* - The term "*capital assets*" means property held by the taxpayer (whether or not connected with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property used in the trade or business, of a character which is subject to the allowance for depreciation provided in Subsection (F) of Section 34; or real property used in trade or business of the taxpayer.

[18] De Leon and De Leon, Jr., *The National Internal Revenue Code Annotated*, 2003 Ed., Vol. 1, pp. 130-131, citing BIR Ruling No. 134, July 12, 1990.

[19] BIR Ruling [DA-062-06] February 28, 2006.

[20] *Spouses Alfredo & Imelda Diaz v. BIR*, C.T.A. Case No. 6244, March 5, 2003.

[21] De Leon and De Leon, Jr., supra, Vol. 2, p. 540.

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