

SECOND DIVISION

[G.R. No. 194152, June 05, 2017]

MAKILITO B. MAHINAY, PETITIONER, VS. DURA TIRE & RUBBER INDUSTRIES, INC., RESPONDENT.

DECISION

LEONEN, J.:

The period to redeem a property sold in an extrajudicial foreclosure sale is not extendible. A pending action to annul the foreclosure sale does not toll the running of the one (1)-year period of redemption under Act No. 3135.^[1]

This resolves a Petition for Review on Certiorari^[2] directly filed before this Court, assailing the Judgment on the Pleadings^[3] dated April 13, 2010 and Order^[4] dated September 2, 2010 rendered by Branch 20 of the Regional Trial Court of Cebu City in Civil Case No. CEB-33639. The trial court dismissed the Complaint filed by Makilito B. Mahinay (Mahinay), declaring that he already lost his right to redeem a parcel of land sold in an extrajudicial foreclosure sale.^[5]

The parcel of land, with an area of 3,616 square meters and located in Barrio Kiot, Cebu City, was covered by Transfer Certificate of Title (TCT) No. 111078 under the name of A&A Swiss International Commercial, Inc. (A&A Swiss).^[6] The property was mortgaged to Dura Tire and Rubber Industries, Inc. (Dura Tire), a corporation engaged in the supply of raw materials for tire processing and recapping, as security for credit purchases to be made by Move Overland Venture and Exploring, Inc. (Move Overland).^[7] Under the mortgage agreement, Dura Tire was given the express authority to extrajudicially foreclose the property should Move Overland fail to pay its credit purchases.^[8]

On June 5, 1992, A&A Swiss sold the property to Mahinay for the sum of P540,000.00.^[9] In the Deed of Absolute Sale,^[10] Mahinay acknowledged that the property had been previously mortgaged by A&A Swiss to Dura Tire, holding himself liable for any claims that Dura Tire may have against Move Overland.^[11]

On August 21, 1994, Mahinay wrote Dura Tire, requesting a statement of account of Move Overland's credit purchases. Mahinay sought to pay Move Overland's obligation to release the property from the mortgage.^[12] Dura Tire, however, ignored Mahinay's request.^[13]

For Move Overland's failure to pay its credit purchases, Dura Tire applied for extrajudicial foreclosure of the property on January 6, 1995.^[14] Mahinay protested the impending sale and filed a third-party claim before the Office of the Provincial Sheriff of Cebu.^[15]

Despite the protest, Sheriff Romeo Laurel (Sheriff Laurel) proceeded with the sale and issued a Certificate of Sale in favor of Dura Tire, the highest bidder at the sale.^[16] The property was purchased at P950,000.00, and the Certificate of Sale was registered on February 20, 1995.^[17]

On March 23, 1995, Mahinay filed a Complaint^[18] for specific performance and annulment of auction sale before the Regional Trial Court of Cebu City. According to Mahinay, there was no proof that Dura Tire supplied raw materials to Move Overland after the property was mortgaged.^[19] Mahinay added that Dura Tire allegedly deprived him of the opportunity to release the property from the mortgage by failing to furnish him with Move Overland's statement of account.^[20] Dura Tire, therefore, had no right to foreclose the mortgage and the foreclosure sale was void.

In its Answer,^[21] Dura Tire mainly argued that Mahinay had no cause of action to file the Complaint to annul the foreclosure sale since he was not privy to the mortgage agreement.^[22]

Acting on Dura Tire's affirmative defense, Branch 15 of the Regional Trial Court of Cebu City initially dismissed the Complaint.^[23] However, on mandamus and certiorari, the Court of Appeals set aside the order of the trial court and remanded the case for further proceedings.^[24] The case was then re-raffled to Branch 12 of the Regional Trial Court of Cebu City.^[25]

After pre-trial proceedings, the trial court again ordered the dismissal of the Complaint due to Mahinay's failure to prosecute the case. However, upon Mahinay's Motion for Reconsideration, the case was reinstated.^[26]

The case was again re-raffled, this time to Branch 58.^[27] After due proceedings, the trial court ultimately dismissed Mahinay's Complaint in the Decision^[28] dated July 29, 2004. The trial court held that Dura Tire was entitled to foreclose the property because of Move Overland's unpaid credit purchases.^[29]

Mahinay's appeal was dismissed by the Court of Appeals in the Decision^[30] dated June 16, 2006. The Court of Appeals held that Mahinay had no right to question the foreclosure of the property.^[31] Mahinay, as "substitute mortgagor,"^[32] was fully aware that the property he purchased from A&A Swiss was previously mortgaged to Dura Tire to answer for Move Overland's obligation. Considering that Move Overland failed to pay for its credit purchases, Dura Tire had every right to foreclose the property.^[33]

Mahinay filed a Petition for Review on Certiorari^[34] before this Court. In G.R. No. 173117, this Court denied Mahinay's Petition as well as his Motion for Reconsideration.^[35] The June 16, 2006 Decision of the Court of Appeals thus became final and executory on August 8, 2007, 15 days after Mahinay received a copy of the Resolution denying his Motion for Reconsideration filed before this Court.^[36]

Relying on the Court of Appeals' finding that he was a "substitute mortgagor," Mahinay filed a Complaint^[37] for judicial declaration of right to redeem on August 24, 2007. "As the admitted owner of the [property] at the time of the foreclosure,"^[38] Mahinay argued that he "must have possessed and still continues to possess the absolute right to redeem the [property]."^[39]

Dura Tire answered^[40] the Complaint, raising the affirmative defense of *res judicata*. Dura Tire argued that the Complaint for judicial declaration of right to redeem had identical parties, subject matter, and causes of action with that of the Complaint for annulment of foreclosure sale.^[41] Furthermore, the period of Mahinay's right of redemption had already lapsed. Therefore, Mahinay could not be allowed to belatedly redeem the property.^[42]

During the hearing on October 27, 2008, Mahinay and Dura Tire jointly moved for a judgment on the pleadings. The trial court granted the motion and deemed the case submitted for decision after the filing of memoranda.^[43]

Mahinay having acquired the property from A&A Swiss before Dura Tire foreclosed the property, the trial court ruled that Mahinay became a "successor-in-interest" to the property even before the foreclosure sale. Therefore, by operation of law, Mahinay was legally entitled to redeem the property.^[44] However, considering that one (1) year period of redemption had already lapsed, Mahinay could no longer exercise his right of redemption.^[45]

Despite Dura Tire's refusal to accept his offer to pay Move Overland's unpaid credit purchases, the trial court said that "there was nothing to stop [Mahinay] from redeeming the property as soon as he became aware of the foreclosure sale. [Mahinay] could have . . . filed an action to compel [Dura Tire] to accept payment by way of redemption."^[46]

Hence, in the Judgment on the Pleadings^[47] dated April 13, 2010, Branch 20 of the Regional Trial Court of Cebu City dismissed Mahinay's Complaint for judicial declaration of right to redeem. The dispositive portion of the Judgment read:

Upon the foregoing considerations, the court finds no factual and legal basis to grant the plaintiffs plea to be allowed to redeem the foreclosed property subject of this case.

IN CONSEQUENCE, Judgment is hereby rendered DISMISSING the plaintiffs Complaint.

SO ORDERED.^[48] (Emphasis in the original)

Mahinay filed a Motion for Reconsideration, which the trial court denied in the Order^[49] dated September 2, 2010.

On a pure question of law, Mahinay directly filed a Petition for Review on Certiorari^[50] before this Court. Dura Tire filed its Comment,^[51] to which Mahinay filed a Reply.^[52]

Mahinay maintains that he should be allowed to redeem the property he bought from A&A Swiss despite the lapse of one (1) year from the registration of the Certificate of Sale on February 20, 1995. Mahinay primarily argues that the one (1)-year period of redemption was tolled when he filed the Complaint for annulment of foreclosure sale on March 23, 1995 and resumed when the June 16, 2006 Decision of the Court of Appeals became final and executory on August 8, 2007.^[53] As basis, Mahinay cites *Consolidated Bank & Trust Corp. v. Intermediate Appellate Court*.^[54]

In the alternative, Mahinay contends that the one (1)-year period of redemption should be counted from the time the June 16, 2006 Decision of the Court of Appeals became final and executory on August 8, 2007. Mahinay theorizes that his right of redemption only arose when he was judicially declared "entitled to redeem the property" in this decision.^[55]

Since he filed his Complaint for judicial declaration of right to redeem on August 24, 2007, only 16 days after August 8, 2007, Mahinay claims that he exercised his right of redemption within the one (1)-year period under Act No. 3135.^[56]

Dura Tire counters that nothing prevented Mahinay from exercising his right of redemption within one (1) year from the registration of the Certificate of Sale.^[57] Dura Tire argues that Mahinay's filing of an action for annulment of foreclosure sale did not toll the running of the redemption period because the law does not allow its extension.^[58] Since the one (1)-year period of redemption already lapsed, Dura Tire maintains that Mahinay can no longer redeem the property at the bid price paid by the purchaser.

The sole issue for this Court's resolution is whether the one (1)-year period of redemption was tolled when Mahinay filed his Complaint for annulment of foreclosure sale.

This Petition must be denied.

Contrary to Mahinay's claim, his right to redeem the mortgaged property did not arise from the Court of Appeals' "judicial declaration" that he was a "substitute mortgagor" of A&A Swiss. By force of law, specifically, Section 6 of Act No. 3135, Mahinay's right to redeem arose when the mortgaged property was extrajudicially foreclosed and sold at public auction. There is no dispute that Mahinay had a lien on the property subsequent to the mortgage. Consequently, he had the right to buy it back from the purchaser at the sale, Dura Tire in this case, "from and at any time within the term of one year from and after the date of the sale." Section 6 of Act No. 3135^[59] provides:

Section 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 the sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the

Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act.

The "date of the sale" referred to in Section 6 is the date the certificate of sale is registered with the Register of Deeds. This is because the sale of registered land does not "'take effect as a conveyance, or bind the land' until it is registered."^[60]

The right of redemption being statutory,^[61] the mortgagor may compel the purchaser to sell back the property within the one (1)-year period under Act No. 3135. If the purchaser refuses to sell back the property, the mortgagor may tender payment to the Sheriff who conducted the foreclosure sale.^[62] Here, Mahinay should have tendered payment to Sheriff Laurel instead of insisting on directly paying Move Overland's unpaid credit purchases to Dura Tire.

As early as 1956, this Court held in *Mateo v. Court of Appeals*^[63] that "the right of redemption . . . must . . . be exercised in the mode prescribed by the statute."^[64] The one (1)-year period of redemption is fixed, hence, non-extendible, to "avoid prolonged economic uncertainty over the ownership of the thing sold."^[65]

Since the period of redemption is fixed, it cannot be tolled or interrupted by the filing of cases to annul the foreclosure sale or to enforce the right of redemption. "To rule otherwise . . . would constitute a dangerous precedent. A likely offshoot of such a ruling is the institution of frivolous suits for annulment of mortgage intended merely to give the mortgagor more time to redeem the mortgaged property."^[66]

In *CMS Stock Brokerage, Inc. v. Court of Appeals*,^[67] Rosario Sandejas (Sandejas) mortgaged two (2) parcels of land in favor of the Bank of the Philippine Islands. She subsequently mortgaged the same parcels of land to CMS Stock Brokerage, Inc. In 1971, CMS Stock Brokerage, Inc. extrajudicially foreclosed the properties, which were sold at a public auction. The certificate of sale was registered on May 19, 1971.^[68]

More than a year after the registration of the Certificate of Sale, or on November 15, 1972, Sandejas wrote the president of the CMS Stock Brokerage, Inc., requesting for three (3) years within which to redeem the properties she mortgaged to it.^[69] The president allegedly agreed, even giving her five (5) more years to redeem the properties.^[70]

However, on February 2, 1973, first mortgagee Bank of the Philippine Islands extrajudicially foreclosed the properties.^[71] Despite the third-party claim and action for quieting of title filed by Sandejas, the Sheriff proceeded with the public auction with Carolina Industries, Inc. emerging as the highest bidder.^[72] The certificate of sale was issued to Carolina Industries, Inc. and was registered on December 16, 1983.^[73]

The action for quieting of title was ultimately resolved in favor of CMS Stock Brokerage, Inc. In G.R. No. 101351, this Court held that CMS Stock Brokerage, Inc. was "the real owner" of the properties, not Sandejas.^[74]