

## FIRST DIVISION

[ G.R. No. 204672, February 18, 2015 ]

**SPOUSES RODOLFO AND MARCELINA GUEVARRA, PETITIONERS,  
VS. THE COMMONER LENDING CORPORATION, INC.,  
RESPONDENT.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>[1]</sup> are the Decision<sup>[2]</sup> dated October 3, 2011 and the Resolution<sup>[3]</sup> dated October 17, 2012 of the Court of Appeals (CA) in CA-G.R. CV No. 02895, which affirmed with modification the Order<sup>[4]</sup> dated October 20, 2008 of the Regional Trial Court of Guimbal, Iloilo, Branch 67 (RTC) in Cadastral Case Nos. 118 and 122, allowing petitioners-spouses Rodolfo and Marcelina Guevarra (Sps. Guevarra) to exercise their right to repurchase the mortgaged property subject of this case, conditioned upon the payment of the purchase price fixed by respondent The Commoner Lending Corporation, Inc. (TCLC).

#### The Facts

On December 16, 1996,<sup>[5]</sup> Sps. Guevarra obtained a P320,000.00 loan from TCLC, which was secured by a real estate mortgage<sup>[6]</sup> over a 5,532- square meter parcel of land situated in Guimbal, Iloilo, covered by Original Certificate of Title (OCT) No. F-31900<sup>[7]</sup> (subject property), emanating from a free patent granted to Sps. Guevarra on February 25, 1986.<sup>[8]</sup>

Sps. Guevarra, however, defaulted in the payment of their loan, prompting TCLC to extra-judicially foreclose the mortgage on the subject property<sup>[9]</sup> in accordance with Act No. 3135,<sup>[10]</sup> as amended. In the process, TCL merged as the highest bidder at the public auction sale held on June 15, 2000 for the bid amount of P150,000.00,<sup>[11]</sup> and on August 25, 2000, the certificate of sale was registered with the Registry of Deeds of Iloilo.<sup>[12]</sup>

Eventually, Sps. Guevarra failed to redeem the subject property within the one-year reglementary period, which led to the cancellation of OCT No. F-31900 and the issuance of Transfer Certificate of Title No.T-16187<sup>[13]</sup> in the name of TCLC. Thereafter, TCLC demanded that Sps. Guevarra vacate the property, but to no avail.<sup>[14]</sup>

#### The RTC Proceedings

On June 10, 2005, TCLC applied for a writ of possession<sup>[15]</sup> before the RTC,

docketed as Cadastral Case No. 118. Sps. Guevarra opposed<sup>[16]</sup> the same by challenging the validity of the foreclosure proceedings due to the purported failure of TCLC to comply with the notice, posting and publication requirements, and lack of authority, as a corporation, to acquire the subject property. Sps. Guevarra also assailed the issuance by the Sheriff of Iloilo of a Final Deed of Sale<sup>[17]</sup> to be premature, as they were still entitled to redeem the subject property within five (5) years from the expiration of the one-year period to repurchase.<sup>[18]</sup>

Subsequently, or on September 8, 2005, Sps. Guevarra filed before the RTC a petition for redemption,<sup>[19]</sup> docketed as Cadastral Case No. 122, maintaining that the redemption period did not expire on August 25, 2001, or one (1) year from the registration of the certificate of sale, but will still expire five (5) years therefrom, or on August 25, 2006.<sup>[20]</sup> They further averred that they pleaded to be allowed to redeem the subject property but TCLC unjustifiably refused the same, constraining them to file said petition, offering to redeem the subject property at P150,000.00, plus one percent (1%) interest per month for five (5) years from August 25, 2000, or in the amount of P240,000.00,<sup>[21]</sup> which they consigned<sup>[22]</sup> to the RTC.

Cadastral Case Nos. 118 and 122 were later consolidated.<sup>[23]</sup>

In an Order<sup>[24]</sup> dated July 12, 2006, the RTC granted TCLC's petition in Cadastral Case No. 118, resulting in the issuance of the corresponding Writ of Possession<sup>[25]</sup> and Notice to Vacate<sup>[26]</sup> which were duly served upon Sps. Guevarra.<sup>[27]</sup> Accordingly, the latter filed a motion for reconsideration<sup>[28]</sup> and Motion to Hold in Abeyance the Implementation of the Writ of Possession.<sup>[29]</sup>

In an Order<sup>[30]</sup> dated October 20, 2008, the RTC denied the motion for reconsideration in Cadastral Case No. 118, but granted Sps. Guevarra's petition in Cadastral Case No. 122. In so doing, the RTC recognized Sps. Guevarra's right to repurchase the subject property, pointing out that they were able to file their petition within the five-year period provided under Section 119 of Commonwealth Act No. 141,<sup>[31]</sup> otherwise known as the Public Land Act (Public Land Act).<sup>[32]</sup> As a consequence, the RTC directed TCLC to reconvey the subject property to Sps. Guevarra and execute the corresponding deed of reconveyance upon payment of the purchase price of P150,000.00, plus one percent (1%) interest per month from the date of the auction sale on June 15, 2000 up to August 8, 2006, as well as the corresponding tax assessments and foreclosure expenses.<sup>[33]</sup>

Dissatisfied, TCLC filed a motion for reconsideration<sup>[34]</sup> which was, however, denied in an Order<sup>[35]</sup> dated January 6, 2009; thus, it filed an appeal<sup>[36]</sup> before the CA.

### **The CA Proceedings**

In a Decision<sup>[37]</sup> dated October 3, 2011, the CA affirmed the RTC's October 20, 2008 Order, upholding Sps. Guevarra's right to repurchase the subject property pursuant to Section 119 of the Public Land Act, with modification that the same be conditioned upon the payment of the purchase price fixed by TCLC. It ruled that after the expiration of the redemption period, the present owner, *i.e.*, TCLC, has the

discretion to set a higher price.<sup>[38]</sup>

Aggrieved, Sps. Guevarra filed a motion for reconsideration<sup>[39]</sup> which was, however, denied in a Resolution<sup>[40]</sup> dated October 17, 2012, hence, this petition.

### **The Issue Before the Court**

The essential issue in this case is whether or not the CA committed a reversible error in ruling that the repurchase price for the subject property should be fixed by TCLC.

### **The Court's Ruling**

In an extra-judicial foreclosure of registered land acquired under a free patent, the mortgagor may redeem the property within two (2) years from the date of foreclosure if the land is mortgaged to a rural bank under Republic Act No. (RA) 720,<sup>[41]</sup> as amended, otherwise known as the Rural Banks Act, or within one (1) year from the registration of the certificate of sale if the land is mortgaged to parties *other than* rural banks pursuant to Act No. 3135.<sup>[42]</sup> If the mortgagor fails to exercise such right, he or his heirs may still repurchase the property within five (5) years from the expiration of the aforementioned redemption period<sup>[43]</sup> pursuant to Section 119 of the Public Land Act, which states:

SEC. 119. Every conveyance of land acquired under the free patent or homestead provisions, when proper, shall be subject to repurchase by the applicant, his widow, or legal heirs, within a period of five years from the date of the conveyance.

In this case, the subject property was mortgaged to and foreclosed by TCLC, which is a lending or credit institution, and not a rural bank; hence, the redemption period is one (1) year from the registration of the certificate of sale on August 25, 2000, or until August 25, 2001. Given that Sps. Guevarra failed to redeem the subject property within the aforesated redemption period, TCLC was entitled, as a matter of right, to consolidate its ownership and to possess the same.<sup>[44]</sup> Nonetheless, such right should not negate Sps. Guevarra's right to repurchase said property within five (5) years from the expiration of the redemption period on August 25, 2001, or until August 25, 2006, in view of Section 119 of the Public Land Act as above-cited.

In this relation, it is apt to clarify that contrary to TCLC's claim,<sup>[45]</sup> the tender of the repurchase price is not necessary for the preservation of the right of repurchase, because the filing of a judicial action for such purpose within the five-year period under Section 119 of the Public Land Act is already equivalent to a formal offer to redeem. On this premise, consignment of the redemption price is equally unnecessary.<sup>[46]</sup>

Thus, the RTC and CA both correctly ruled that Sps. Guevarra's right to repurchase the subject property had not yet expired when Cadastral Case No. 122 was filed on September 8, 2005. That being said, the Court now proceeds to determine the proper amount of the repurchase price.

Sps. Guevarra insist that the repurchase price should be the purchase price at the auction sale plus interest of one percent (1%) per month and other assessment fees,<sup>[47]</sup> citing the rulings in the cases of *Belisario v. Intermediate Appellate Court*<sup>[48]</sup> (*Belisario*) and *Salenillas v. CA*<sup>[49]</sup> (*Salenillas*). On the other hand, TCLC maintains that it is entitled to its total claims under the promissory note and the mortgage contract<sup>[50]</sup> in accordance with Section 47<sup>[51]</sup> of the General Banking Law of 2000.<sup>[52]</sup>

TCLC's argument is **partly** correct.

To resolve the matter, it must first be pointed out that case law has equated a right of repurchase of foreclosed properties under Section 119 of the Public Land Act as a "right of redemption"<sup>[53]</sup> and the repurchase price as a "redemption price."<sup>[54]</sup> Thus, in *Salenillas*, the Court applied then Section 30, now Section 28, Rule 39 of the Rules of Court (Rules) in the redemption of the foreclosed property covered by a free patent:

Now, as regards the redemption price, applying Sec. 30 of Rule 39 of the [Rules], the petitioners should reimburse the private respondent the amount of the **purchase price at the public auction plus interest at the rate of one per centum per month** up to November 17, 1983, together with the amounts of **assessments and taxes** on the property that the private respondent might have **paid after purchase and interest on the last named amount at the same rate as that on the purchase price.** (Emphases supplied)<sup>[55]</sup>

The Court has, however, ruled<sup>[56]</sup> that redemptions from lending or *credit institutions*, like TCLC, are governed by Section 78<sup>[57]</sup> of the General Banking Act (now Section 47 of the General Banking Law of 2000), which amended Section 6 of Act No. 3135 in relation to the proper redemption price when the mortgagee is a bank, or a banking or credit institution.<sup>[58]</sup>

Nonetheless, the Court cannot subscribe to TCLC's contention that it is entitled to its total claims under the promissory note and the mortgage contract<sup>[59]</sup> in view of the settled rule that ***an action to foreclose must be limited to the amount mentioned in the mortgage.***<sup>[60]</sup> Hence, amounts not stated therein must be excluded, like the **penalty charges of three percent (3%) per month** included in TCLC's claim.<sup>[61]</sup> A penalty charge is likened to a compensation for damages in case of breach of the obligation. Being penal in nature, it must be specific and fixed by the contracting parties.<sup>[62]</sup>

Moreover, the Court notes that the **stipulated three percent (3%) monthly interest** is excessive and unconscionable. In a plethora of cases, the Court has affirmed that **stipulated interest rates of three percent (3%) per month and higher are excessive, iniquitous, unconscionable, and exorbitant,**<sup>[63]</sup> hence, **illegal**<sup>[64]</sup> and **void for being contrary to morals.**<sup>[65]</sup> In *Agner v. BPI Family*

*Savings Bank, Inc.*,<sup>[66]</sup> the Court had the occasion to rule:

Settled is the principle which this Court has affirmed in a number of cases that stipulated interest rates of **three percent (3%) per month** and higher are excessive, iniquitous, unconscionable, and exorbitant. While Central Bank Circular No. 905-82, which took effect on January 1, 1983, effectively removed the ceiling on interest rates for both secured and unsecured loans, regardless of maturity, nothing in the said circular could possibly be read as granting *carte blanche* authority to lenders to raise interest rates to levels which would either enslave their borrowers or lead to a hemorrhaging of their assets. **Since the stipulation on the interest rate is void for being contrary to morals, if not against the law, it is as if there was no express contract on said interest rate; thus, the interest rate may be reduced as reason and equity demand.** (Emphases supplied)<sup>[67]</sup>

As such, the stipulated three percent (3%) monthly interest should be equitably reduced to one percent (1%) per month or twelve percent (12%) per annum reckoned from the execution of the real estate mortgage on December 12, 1996,<sup>[68]</sup> until the filing of the petition in Cadastral Case No. 122 on September 8, 2005.

In addition to the principal and interest, the repurchase price should also include all the expenses of foreclosure, *i.e.*, Judicial Commission, Publication Fee, and Sheriff's Fee, in accordance with Section 47<sup>[69]</sup> of the General Banking Law of 2000. Considering further that Sps. Guevarra failed to redeem the subject property within the one-year reglementary period, they are liable to reimburse TCLC for the corresponding Documentary Stamp Tax (DST) and Capital Gains Tax (CGT) it paid pursuant to Bureau of Internal Revenue (BIR) Revenue Regulations No. 4-99,<sup>[70]</sup> which requires the payment of DST on extra-judicial foreclosure sales of capital assets initiated by banks, finance and insurance companies, as well as CGT in cases of non-redemption. CGT and DST are expenses incident to TCLC's custody of the subject property, hence, likewise due, under the above provision of law.

Accordingly, the repurchase price is hereby computed as follows:

Principal		P320,000.00
Add: Interest from 12/12/1996 to 09/05/2005		
from 12/12/1996 to 12/12/2004:	P307,200.00	
(P320,000.00 x 12% x 8 years)		
from 12/13/2004 to 09/08/2005:	<u>28,405.48</u>	<u>335,605.48</u>
(P320,000.00 x 12% x 270/365)		
Total Amount due under the mortgage		P655,605.48
Add: Capital Gains Tax		18,203.17
Documentary Stamp Tax		4,501.46
Judicial Commission		4,150.00
Publication Fee		4,000.00
Sheriff's Fee		<u>3,000.00</u>
<b>Repurchase Price</b>		<b>P689,460.11</b>
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