

## 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.<sup>[1]</sup>

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<sup>[2]</sup> 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<sup>[3]</sup> 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)		<u><b>P 15,704,249.12</b></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<sup>[4]</sup> 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<sup>[5]</sup> 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  
7<sup>th</sup> 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<sup>[6]</sup>  
(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<sup>[7]</sup> 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.<sup>[8]</sup>

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.<sup>[9]</sup>

By Resolution<sup>[10]</sup> 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.<sup>[11]</sup>

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