

## SECOND DIVISION

[ G.R. No. 143896, July 08, 2005 ]

**BANCO FILIPINO SAVINGS AND MORTGAGE BANK, PETITIONER,  
VS. COURT OF APPEALS AND SANTIAGO (ISABELA) MEMORIAL  
PARK, INC., RESPONDENTS.**

### D E C I S I O N

**AUSTRIA-MARTINEZ, J.:**

Before us is a petition for review on *certiorari* filed by petitioner seeking to annul the Decision<sup>[1]</sup> of the Court of Appeals (CA) dated March 31, 2000 in CA-G.R. CV No. 47044, which reversed the Order of the trial court dated May 10, 1994, dismissing private respondent's complaint for failure to state a cause of action; and the Resolution dated July 3, 2000<sup>[2]</sup> denying petitioner's motion for reconsideration.

On December 20, 1993, private respondent Santiago (Isabela) Memorial Park, Inc. filed a complaint for redemption and specific performance with the Regional Trial Court of Santiago, Isabela, Branch 21, against herein petitioner Banco Filipino Savings & Mortgage Bank, the material and relevant allegations of which read as follows:

#### COMPLAINT

Plaintiff, by counsel, to this Honorable Court most respectfully alleges:

1. ....
2. ....
3. That in February 1981, plaintiff mortgaged the above described property in favor of defendant to secure a loan of P500,000.00 obtained by plaintiff from defendant;
4. That due to the failure of plaintiff to pay the aforementioned loan, defendant foreclosed the mortgage and in consequence thereof Sheriff David R. Medina of this Honorable Court issued a SHERIFF'S CERTIFICATE OF SALE in favor of defendant which is dated October 9, 1990 and which instrument was inscribed at the back of TCT T-128647 of Isabela on January 21, 1991;
5. That in a letter of the President of plaintiff dated August 6, 1991, plaintiff made manifest its interest to exercise its right of redemption and made an offer of P700,000.00 as redemption to defendant through the then Deputy Liquidator, ROSAURO NAPA; this started the negotiation for the redemption of the above

described property;

6. That in a letter of the Deputy Liquidator dated January 23, 1992, plaintiff was given up to the end of March 1992 to negotiate and make special arrangement for any satisfactory plan of payment for the redemption;
7. That in a letter of the Deputy Liquidator dated March 12, 1992, plaintiff was directed to remit at least P50,000.00 to defendant which would manifest the interest and willingness of plaintiff to redeem the property, and forthwith on March 24, 1992, plaintiff remitted the sum of P50,000.00 to defendant which was duly receipted by the latter under Official Receipt No. 279968 A dated March 24, 1992;
8. That in a letter of the President of plaintiff dated January 20, 1993, plaintiff amended its first offer and made an offer of P1,000,000.00 as redemption which offer included a plan of payment;
9. That between January 20, 1993 to November 1993, plaintiff exerted earnest efforts in order to finally effect the redemption, but defendant dilly dallied on the matter.
10. That in a letter of Atty. ORLANDO O. SAMSON, Senior Vice President of defendant, dated November 5, 1993, there is a turn-around by defendant and is now demanding P5,830,000.00 as purchase price of the property, instead of the original agreed redemption;
11. That the delay of the defendant in the finalization of the terms of redemption did not in any manner alter the right of plaintiff to redeem the property from defendant;
12. That plaintiff is still in actual possession of the property and intend to remain in actual possession of the property, while defendant was never in actual possession of said property;
13. That plaintiff is ready and willing to pay the redemption money, which is the total bank claim of P925,448.17 plus lawful interest and other allowable expenses incident to the foreclosure proceedings;
14. That the latest actuations of defendant are indicative of the refusal of defendant to allow the exercise of redemption by herein plaintiff, reason for which there is a need for judicial determination of the rights and obligations of the parties to this case;
15. That on account of the unlawful actuations of defendant in refusing the redemption of the property by plaintiff, the latter engaged the services of counsel for a fee of P30,000.00 which defendant should pay to plaintiff.

WHEREFORE, it is respectfully prayed of this Honorable Court that, after due hearing, judgment be rendered:

- a. ordering defendant to accept from plaintiff the lawful redemption amount which shall be determined by this Honorable Court;
- b. ordering defendant to execute the necessary instrument in order to effect the redemption of the property;
- c. ordering defendant to pay to plaintiff the sum of P30,000.00 by way of attorney's fees;

AND PLAINTIFF PRAYS for further reliefs just and equitable under the premises.

Petitioner filed a motion to dismiss on the ground that the complaint does not state a cause of action. It alleges that assuming that the allegations in the complaint are true and correct, still there was no redemption effected within one year from the date of registration of the sheriff's certificate of sale with the Register of Deeds on January 21, 1991, thus private respondent had lost its right to redeem the subject land. Petitioner claimed that the letter cited in paragraph 5 of the complaint was a mere offer to redeem the property which was promptly answered by a letter dated August 28, 1991, which categorically denied private respondent's offer and stated that when it comes to redemption, the basis of payment is the total claim of the bank at the time the property was foreclosed plus 12% thereof and all litigation expenses attached thereto or its present appraised value whichever is higher; that the letter mentioned in paragraph 6 of the complaint dated January 23, 1992 of the Deputy Liquidator was about negotiation and special arrangement and not redemption for at that stage the period of redemption had already expired; that the letter mentioned in paragraph 7 dated March 12, 1992 was of the postponement of the consolidation of the subject property and not of any extension for the period of redemption; that the amount of P50,000.00 remitted by private respondent was in consideration of the postponement of the consolidation of the property in petitioner's name and as manifestation of private respondent's sincerity to repurchase the foreclosed property; that when private respondent remitted P50,000.00, the Deputy Liquidator of petitioner bank requested the legal counsel of petitioner to defer consolidation of property in petitioner's name; that in a letter dated November 5, 1993, petitioner's Senior Vice President declared that the subject property is available for repurchase in the amount of P5,830,600.00 to which private respondent in another letter asked for an extension of 30 days to make an offer.

Private respondent filed its opposition to the motion to dismiss alleging among others that the complaint states a cause of action; that the annexes of the motion to dismiss should not be considered in the resolution of such motion.

On May 10, 1994, the trial court rendered an Order<sup>[3]</sup> dismissing the complaint. It ratiocinated that (1) the letter dated August 6, 1991 was an offer to redeem for P700,000.00 without any tender of the money; (2) the reply letter of petitioner dated August 28, 1991 stated that the redemption price is P1,146,837.81 representing the bank's claim of P925,448.17 plus 12% interest and expenses of foreclosure or the appraised value which was P1,457,650.00; (3) the March 12,

1992 letter of the petitioner categorically informed private respondent that the period for redemption had expired, however, the bank agreed to postpone the consolidation of title of the land in the bank's name up to the end of March 1992 if the plaintiff shall deposit P50,000.00 in order to avoid consolidation. Under Section 6 of Act 3135, on redemption of foreclosed property, it is provided that a debtor may redeem the property at anytime within one year from and after the date of sale, *i.e.*, one year period to be reckoned from the registration of the sheriff's certificate of sale. The registration of sheriff's sale was on January 21, 1991 so that the redemption period was until January 21, 1992; that although there was an offer to redeem the property for P700,000.00 on August 6, 1991, which was within the redemption period, there was no tender of redemption price and the P700,000.00 offered was not the correct redemption price. It found that the complaint did not state that private respondent tendered the correct redemption price within the redemption period as required under Section 30 of Rule 39 of the Rules of Court. Private respondent's motion for reconsideration was denied in an Order dated July 25, 1994.<sup>[4]</sup>

Private respondent filed its appeal with the CA which reversed the trial court in its assailed decision, the dispositive portion of which reads:

WHEREFORE, the Orders of the respondent trial court dated May 10, 1994, and July 25, 1994 are hereby REVERSED and SET ASIDE. The appellants are declared entitled to repurchase the property in question within THIRTY (30) days from notice hereof which shall be effected upon payment of the repurchase price of P925,448.17 less P50,000.00, which is the deposit on the redemption price, with legal interest from March 24, 1992, the time the contract extending the period of redemption of the property took effect until it is fully paid.<sup>[5]</sup>

The CA ruled that:

A perusal of the allegations in the complaint shows that there was sufficient basis to make out a case against Banco Filipino. The complaint alleged that as early as August 6, 1991 or about six (6) months before the statutory period for redemption would expire, the appellant had exerted earnest efforts to effect the redemption of the property in question and that after an agreement had been reached by the parties, with the corresponding deposit on the redemption price had been given by the appellant, the appellee bank led the appellant to believe that the appellee was negotiating with the former in good faith. However, the true intention of the appellee bank was to refuse the redemption of the property as manifested by its act of increasing the amount of the redemption price after the period for redemption had expired and after a deposit on the redemption price had been duly accepted by it as evidenced by a receipt issued by the appellee.

Even assuming however that the appellant is now barred from exercising its right of redemption, yet it can still repurchase the property in question based on a new contract entered into between the parties extending the period within which to purchase the property as evidenced by the appellee's Deputy Liquidator Rosauro Napa's letter to Belen Jocson dated March 12, 1992 and the letter addressed to Atty. German M. Balot, Legal