

## THIRD DIVISION

**[ G.R. No. 138978, September 12, 2002 ]**

**HI-YIELD REALTY, INC., PETITIONER, VS. COURT OF APPEALS,  
HONORABLE MAURICIO RIVERA AS PRESIDING JUDGE OF THE  
REGIONAL TRIAL COURT, ANTIPOLLO CITY, BRANCH 73 AND  
NOLI FRANCISCO, RESPONDENTS.**

### DECISION

**CORONA, J.:**

For review is the decision dated November 18, 1998 of the Court of Appeals, the dispositive part of which reads:

"WHEREFORE, foregoing considered, the petition to declare the Orders dated 31 January 1994, 15 March 1994, 13 June 1994 and 16 July 1997 of the Regional Trial Court of Antipolo, Rizal, Branch 23, in Civil Case No. 93-2813 is DENIED. Accordingly, the assailed Orders are SUSTAINED. The trial court is hereby directed to make a final determination of the REDEMPTION PRICE. HI-YIELD REALTY, INC. is directed to allow NOLI S. FRANCISCO to redeem the subject property for the amount as determined by the trial court.

SO ORDERED."<sup>[1]</sup>

### THE FACTS

On August 10, 1987, private respondent Noli Francisco, as attorney-in-fact of spouses Servulo Carawatan and Felicidad Leyva, and petitioner Hi-Yield Realty, Inc. entered into a "Deed of Real Estate Mortgage" with Francisco as mortgagor and Hi-Yield Realty, Inc. as mortgagee. The property subject of the mortgage, which was owned by the spouses Carawatan, was situated at Lumang Dayap, Cainta, Rizal and covered by Transfer Certificate of Title No. 297171. It was mortgaged as security for the loan of P100,000 which was payable in three (3) months.

Private respondent failed to pay and settle the amount loaned despite repeated demands by petitioner. Hence, on February 27, 1992, petitioner extrajudicially foreclosed the mortgage on the property. The property was sold for P285,000 with petitioner as the highest bidder. Subsequently, a Certificate of Sale<sup>[2]</sup> was issued in favor of petitioner. This was registered on August 13, 1992. Under the law, private respondent thus had a twelve-month redemption period expiring on August 13, 1993.

On August 13, 1993, however, private respondent, claiming that he offered to redeem the property twice prior to the expiration of the said redemption period but that petitioner allegedly refused to accept the offer and instead demanded more than P1,500,000 as redemption price, filed a petition with the Regional Trial Court, Branch 23 of Antipolo, Rizal, with the following prayer:

"1. ordering the respondent to have the subject real property be redeemed by the petitioner after paying the amount of P285,000.00, plus 1% per month interest therein and other amount which the purchaser may have paid thereon after purchase;

2. Notifying the Register of Deeds for the Province of Rizal of the instant petition and hence, title to the aforesaid real property not be consolidated to and in favor of the respondent foreclosure sale/buyer.

And in the meantime, Petitioner further prays before the Honorable Court, that he be allowed to consign/deposit the amount of P285,000.00 plus interest of 1% per month beginning August 12, 1992 in favor of respondent, to show his good faith in paying the redemption price."<sup>[3]</sup>

On January 31, 1994, the trial court declared that the issue as manifested by the parties in the pre-trial conference was merely to determine the amount of the capital gains tax and documentary stamps as computed by the Marikina BIR office. Thus, it ordered private respondent to pay the corresponding amount of taxes within thirty (30) days or on March 15, 1994.

On March 15, 1994, the trial court issued an order directing petitioner to submit within two (2) days an updated statement of account which was to be the basis for the payment of the redemption price by private respondent. In the same order, private respondent was also directed to pay the redemption price within fifteen (15) days from receipt of the order.

In compliance with the order, petitioner submitted to the trial court a detailed computation of the total redemption price as of March 17, 1994. Private respondent received his copy on March 24, 1994 and therefore had until April 8, 1994 to pay the redemption price in full. He, however, failed to pay it by that date. Instead, on April 8, 1994, private respondent filed an "Urgent Motion for Extension of Time"<sup>[4]</sup> with the trial court asking for an extra time of forty-five (45) days within which to pay the redemption price. He reasoned that his debtor was not able to pay him the amount he needed to augment his cash on hand and that he was then waiting for a bank loan for P150,000. Simply put, private respondent did not have sufficient money to tender.

The trial court denied private respondent's motion in its order dated May 4, 1994, recognizing the right of petitioner to consolidate the property in its name.<sup>[5]</sup> The order stated:

"Acting on the motion for extension of time filed by the petitioner in this case praying that they be granted a period of 45 days from April 8, 1994 within which to pay the redemption price to the respondent and considering that since April 8, 1994 up to the present, a period of 26 days have elapsed without any pleading filed by the petitioner that they are ready and willing to pay the redemption price and considering the opposition filed by the respondent/oppositor, the motion is found to be without merit and, therefore, the Court denies the motion.

Wherefore, the respondent has the right to consolidate the property in its name.”

Subsequently, petitioner filed a motion to compel private respondent to deliver the original owner’s copy of title (TCT No. 297171).

On May 26, 1994, private respondent moved to reconsider, offering to pay the amount of P510,000 in manager’s check and P38, 872.93 in personal check.

In a surprising turn-around, the trial court issued an order on June 13, 1994 directly contradicting its May 4, 1994 order: it now allowed private respondent to pay petitioner the redemption price in the amount of P548, 872.93 plus 1% per month from April 8, 1994 to June 30, 1994 within five (5) days from receipt of the order. Not only that. Petitioner was also ordered to accept the payment offered by respondent as the full redemption price.

When petitioner refused to accept private respondent’s tender of payment, private respondent, on June 28, 1994, filed a motion<sup>[6]</sup> with the trial court to consign the amount of P561, 247.61 as the full and final redemption price.

On July 8, 1994, petitioner moved to reconsider the June 13, 1994 order arguing that the period of redemption could not be extended as it is fixed by law. But the trial court, on July 16, 1997, not only denied petitioner’s motion for reconsideration but also granted private respondent’s motion for consignation.

Aggrieved, petitioner filed a petition for certiorari at the Court of Appeals, alleging that the orders of the trial court dated January 31, 1994, March 15, 1994, June 13, 1994 and July 16, 1997 were issued in excess of the trial court’s jurisdiction. Petitioner argued that the trial court in effect extended the twelve-month period of redemption of a duly foreclosed property by almost four years.

The Court of Appeals, however, did not find merit in the petition on the basis of the following:

“x x x the one-year redemption period should be reckoned from 13 August 1992. In this regard, NOLI was able to effectively exercise his right of redemption on 13 August 1993.

The records show that on two occasions, within the redemption period, NOLI offered to redeem the subject property. Failing to afford the redemption price stated by HYRI, he filed an action before the trial court with the purpose of determining the subject property. To show his good faith in paying the redemption price, NOLI offered to consign/deposit the amount of P285,000.00 plus 1% interest per month beginning 12 August 1992 in favor of HYRI.

NOLI’s petition filed on 13 August 1993 had the effect of a formal offer to redeem. As stated in *Belisario vs. Intermediate Appellate Court*, ‘the filing of a complaint to enforce repurchase within the period of redemption is equivalent to an offer to redeem and has the effect of preserving the right to redemption.’ To explain, ‘a formal offer to redeem, accompanied by a *bona fide* tender of the redemption price, although proper, is not essential where x x x the right to redeem is exercised thru the filing of judicial action.’ Where ‘the action is filed after the statutory

period has expired, the determination of whether the plaintiff consigned the redemption price with the court simultaneous with the filing of the action is necessary to see if the right of redemption sans judicial action was validly exercised.' Thus, to reiterate, the filing of the action itself within the redemption period is equivalent to a formal offer to redeem. (Underscoring provided)

In view thereof, the petition filed before the trial court was timely made and was rightfully acted on.

x x x

x x x

x x x

In the instant case, the assailed Orders were issued merely to determine the amount of capital gains tax and documentary stamps, as computed by BIR Marikina and to consider the granting of NOLI's right to redeem the subject property. x x x In view thereof, there was no extension of the redemption period. As heretofore stated, the period of redemption expired on 13 August 1993. And within the said period, NOLI has effectively exercised his right of redemption. Having so established the same, the contention of extending the redemption period finds no support in the records of the instant case."<sup>[7]</sup>

Frustrated in its attempt to stymie private respondent's efforts to redeem the subject property on a petition to the Court of Appeals, petitioner now seeks a review of the respondent court's decision under the following-

#### "ASSIGNMENT OF ERRORS

A. THE HONORABLE COURT OF APPEALS ERRED IN SUSTAINING THE ORDERS OF THE TRIAL COURT EXTENDING THE PERIOD OF REDEMPTION AND GRANTING A RELIEF IN EQUITY WHERE THE APPLICABLE LAW AND JURISPRUDENCE SPECIFICALLY PROVIDES OTHERWISE.

B. THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE ORDERS OF THE TRIAL COURT WHICH ERRED IN ITS APPLICATION AND INTERPRETATION OF SECTION 28, RULE 39 OF THE 1997 RULES OF CIVIL PROCEDURE.

C. THE HONORABLE COURT OF APPEALS ERRED IN APPLYING THE RULINGS IN THE BELISARIO CASE IN THE CASE AT BAR."<sup>[8]</sup>

#### THE ISSUES

In a nutshell, petitioner argues that the trial court erred in allowing redemption after April 8, 1994, the date when private respondent lost all his redemptive rights. Stated otherwise, the trial court should not have allowed private respondent forty-five (45) more days beyond April 8, 1994 within which to redeem the foreclosed property.

Petitioner contends that the motions dated May 26, 1994 and June 28, 1994 filed by private respondent to consign and tender the payment of the redemption price were merely designed to stretch the time for redemption of the subject property. Private respondent did not have the ability to redeem the subject property as he had no

money at the outset. The redemption price he initially offered was woefully inadequate because it did not include the taxes, interest and other expenses petitioner incurred during the foreclosure proceedings. Petitioner therefore felt it was justified in refusing to accept private respondent's initial offer to redeem. Hence, private respondent's action in the Antipolo RTC, filed on August 13, 1993 (*the original expiration date of the period of redemption*), was merely a subterfuge to forestall the running of the redemption period.

Furthermore, according to petitioner, even if private respondent had been legally allowed to redeem the property until April 8, 1994 (as authorized by the March 15, 1994 order of the trial court), the latter never made any actual tender or consignment of payment and therefore no redemption was ever made. Thus, private respondent had already lost all his redemptive rights as of that date and the order dated June 13, 1994 granting a further forty-five (45) day extension to redeem after April 8, 1994 was completely beyond the trial court's power to give.

### THE QUESTIONED ORDERS

Petitioner challenged before the respondent Court of Appeals the authority of the trial court to issue the following orders–

(a) dated January 31, 1994 which defined the issue involved in the case as merely determining the amount of taxes and which mandated private respondent to pay the corresponding amount of taxes within thirty (30) days;

(b) dated March 15, 1994 which directed petitioner to submit an updated statement of account and private respondent to pay the redemption price (the updated statement of account as basis therefor) within fifteen (15) days from receipt of the order;

(c) dated June 13, 1994 which allowed private respondent to redeem upon payment to petitioner of the redemption price of P548,872.93 and

(d) dated July 16, 1997 which denied petitioner's motion for reconsideration of the June 13, 1994 order and which granted private respondent's motion for consignment.

Petitioner now seeks to correct in this Court the error of the Court of Appeals in sustaining the four above-mentioned orders of the trial court.

### THIS COURT'S RULING

Section 28, Rule 39 of the Rules of Court provides:

"SEC. 28. *Time and manner of, and amounts payable on, successive redemptions; notice to be given and filed.* – The judgment obligor, or redemptioner, may redeem the property from the purchaser, at any time within one (1) year from the date of the registration of the certificate of sale, by paying the purchaser the amount of his purchase, with one per centum per month interest thereon in addition, up to the time of redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after purchase, and interest on such last named amount of the same rate; and if the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the