



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

MAKILITO B. MAHINAY,
Petitioner,

G.R. No. 194152

Present:

-versus-

CARPIO, *J.*, Chairperson,
PERALTA,
MENDOZA,*
LEONEN, and
MARTIRES,** *JJ.*

DURA TIRE & RUBBER
INDUSTRIES, INC.,
Respondent.

Promulgated:
05 JUN 2017

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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 Certiorari² directly filed before this Court, assailing the Judgment on the Pleadings³ dated April 13, 2010 and Order⁴ dated September 2, 2010 rendered by Branch 20 of the Regional

* On official leave.

** On official leave.

¹ An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real-Estate Mortgages (1924).

² *Rollo*, pp. 9–32.

³ *Id.* at 34–37. The Judgment on the Pleadings was penned by Presiding Judge Bienvenido R. Saniel, Jr.

⁴ *Id.* at 38.

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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 ₱540,000.00.⁹ 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

⁵ Id. at 37.

⁶ Id. at 46.

⁷ Id.

⁸ Id. at 46-47.

⁹ Id. at 43.

¹⁰ Id. at 43-44.

¹¹ Id. at 43.

¹² Id. at 45, Letter dated August 21, 1994.

¹³ Id. at 91, Court of Appeals Decision dated June 16, 2006.

¹⁴ Id. at 154, Comment.

¹⁵ Id. at 90 and 91.

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highest bidder at the sale.¹⁶ The property was purchased at ₱950,000.00, and the Certificate of Sale was registered on February 20, 1995.¹⁷

On March 23, 1995, Mahinay filed a Complaint¹⁸ 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 Decision²⁸ 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

¹⁶ Id.

¹⁷ Id. at 48.

¹⁸ Id. at 49–54.

¹⁹ Id. at 51–52.

²⁰ Id. at 50.

²¹ Id. at 55–64, Answer with Special and Affirmative Defenses and Counterclaims.

²² Id. at 57.

²³ Id. at 66–67. The Order was penned by Presiding Judge German G. Lee, Jr. of Branch 15, Regional Trial Court of Cebu, Cebu City.

²⁴ Id. at 68–74. The Decision was promulgated on November 27, 1998, docketed as CA-G.R. SP No. 42944, and was penned by Associate Justice Corona Ibay Somera and concurred in by Associate Justice (subsequently Associate Justice of this Court) Romeo J. Callejo, Sr. and Associate Justice Salvador J. Valdez, Jr. of the Former Special 8th Division, Court of Appeals, Manila.

²⁵ Id. at 92, Court of Appeals Decision dated June 16, 2006.

²⁶ Id.

²⁷ Id. at 93, Court of Appeals Decision dated June 16, 2006.

²⁸ Id. at 75–89. The Decision, docketed as Civil Case No. CEB-17248, was penned by Presiding Judge Gabriel T. Ingles of Branch 58, Regional Trial Court, Cebu City.

²⁹ Id. at 89.

Mahinay's appeal was dismissed by the Court of Appeals in the Decision³⁰ 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 Certiorari³⁴ 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 Complaint³⁷ 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 answered⁴⁰ 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

³⁰ Id. at 90–98. The Decision, docketed as CA-G.R. CV No. 00662, was penned by Associate Justice Isaias P. Dicedican and was concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Agustin S. Dizon of the 19th Division, Court of Appeals, Cebu City.

³¹ Id. at 96.

³² Id.

³³ Id.

³⁴ Id. at 9–32.

³⁵ Id. at 17–19.

³⁶ Id. at 18. Mahinay received the copy of the Resolution denying his Motion for Reconsideration on July 24, 2007.

³⁷ Id. at 100–110.

³⁸ Id. at 105.

³⁹ Id.

⁴⁰ Id. at 111–122, Answer with Special and Affirmative Defenses and Counterclaims.

⁴¹ Id. at 114–115.

⁴² Id. at 115–116.

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 Pleadings⁴⁷ 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 plaintiff’s plea to be allowed to redeem the foreclosed property subject of this case.

IN CONSEQUENCE, Judgment is hereby rendered DISMISSING the plaintiff’s Complaint.

SO ORDERED.⁴⁸ (Emphasis in the original)

Mahinay filed a Motion for Reconsideration, which the trial court denied in the Order⁴⁹ dated September 2, 2010.

On a pure question of law, Mahinay directly filed a Petition for Review on Certiorari⁵⁰ before this Court. Dura Tire filed its Comment,⁵¹ to which Mahinay filed a Reply.⁵²

⁴³ Id. at 34.

⁴⁴ Id. at 35.

⁴⁵ Id. at 36–37.

⁴⁶ Id. at 37.

⁴⁷ Id. at 34–37.

⁴⁸ Id. at 37.

⁴⁹ Id. at 38.

⁵⁰ Id. at 9–32.

⁵¹ Id. at 153–173.

⁵² Id. at 174–190, Reply to the Comment.

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

⁵³ Id. at 27–29.

⁵⁴ 234 Phil. 582 (1987) [Per J. Gutierrez, Jr., First Division].

⁵⁵ Id. at 20–22.

⁵⁶ An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real-Estate Mortgages (1924).

⁵⁷ Id. at 163.

⁵⁸ Id. at 168–170.

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. 3135⁵⁹ 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

⁵⁹ An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real-Estate Mortgages (1924).

⁶⁰ See *Reyes v. Noblejas*, 129 Phil. 256, 262 (1967) [Per J. Angeles, En Banc] citing *Salazar v. Flor de Lis Meneses*, 118 Phil. 512, 514 (1963) [Per J. Dizon, En Banc]. See also *Agbulos v. Alberto*, 115 Phil. 777, 780 (1962) [Per J. Dizon, En Banc].

⁶¹ *Mateo v. Court of Appeals*, 99 Phil. 1042 (1956) [Per J. A.J. Reyes, En Banc].

⁶² See *Spouses Natino v. Intermediate Appellate Court*, 274 Phil. 602, 611 (1991) [Per J. Davide, Jr., Third Division].

⁶³ 99 Phil. 1042 (1956) [Per J. A.J. Reyes, En Banc].

⁶⁴ Id.

⁶⁵ *BPI Family Savings Bank, Inc. v. Spouses Veloso*, 479 Phil. 627, 635 (2004) [Per J. Corona, Third Division].

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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

Nine (9) years after the registration of the Certificate of Sale in favor of Carolina Industries, or on December 15, 1992, CMS Stock Brokerage, Inc. tendered ₱2,341,166.48 as redemption money with the Clerk of Court. It then filed with the trial court a motion to require the Sheriff to execute a

⁶⁶ See *Union Bank of the Phils. v. Court of Appeals*, 412 Phil. 64, 75 (2001) [Per J. De Leon, Jr., Second Division]. The case involved the right of redemption for property foreclosed as full or partial payment of an obligation to any bank governed by Section 78 of the General Banking Act. Section 78 of the General Banking Act and Section 6 of Act No. 3135 both provide for a fixed one (1)-year period of redemption.

⁶⁷ 341 Phil. 787 (1997) [Per J. Melo, Third Division].

⁶⁸ Id. at 791.

⁶⁹ Id.

⁷⁰ Id.

⁷¹ Id.

⁷² Id. at 792–793.

⁷³ Id. at 793.

⁷⁴ Id.

certificate of redemption.⁷⁵ The trial court, however, denied the motion, reasoning the right of redemption of CMS Stock Brokerage, Inc. had already lapsed.⁷⁶

This Court affirmed the trial court's decision. On whether the quieting of title action filed by Sandejas tolled the running of the one (1)-year period of redemption, this Court ruled in the negative. According to this Court, "the issue of ownership insofar as [CMS Stock Brokerage, Inc.'s] right of redemption as judgment debtor is concerned, has no bearing whatsoever, so as to have the effect of tolling or interrupting the running of the 12-month redemption period."⁷⁷ This Court noted that the decision on the quieting of title case would only affect Sandejas' title to the property.

In *Spouses Pahang v. Judge Vestil*,⁷⁸ where spouses Antonio and Lolita Pahang (the Spouses Pahang) were represented by Mahinay's law firm,⁷⁹ the Spouses Pahang loaned ₱1,500,000.00 from Metrobank and mortgaged a parcel of land as security for the mortgage.⁸⁰ When the Spouses Pahang failed to pay their loan, Metrobank extrajudicially foreclosed the property. At the public sale, Metrobank emerged as the highest bidder and a corresponding certificate of sale was issued to it. The Certificate of Sale was registered on January 27, 1998.⁸¹

On December 29, 1998, Metrobank wrote the Spouses Pahang to remind them of the expiration of their right of redemption on January 27, 1999.⁸² Ignoring Metrobank's note, the Spouses Pahang instead filed an action for annulment of extrajudicial sale, contending that Metrobank charged them excessive interests and other fees. They likewise prayed in their Complaint that they be allowed to redeem their mortgaged property.⁸³

The right of redemption of the Spouses Pahang thus expired on January 27, 1999. Metrobank consolidated its ownership over the properties, and a transfer certificate of title was issued in its name. It subsequently filed a petition for issuance of a writ of possession.⁸⁴

⁷⁵ Id. at 793.

⁷⁶ Id. at 790.

⁷⁷ Id. at 799.

⁷⁸ 478 Phil. 189 (2004) [Per J. Callejo, Sr., Second Division].

⁷⁹ Id. at 191.

⁸⁰ Id. at 192.

⁸¹ Id.

⁸² Id.

⁸³ Id. at 192-193.

⁸⁴ Id. at 193.

The Spouses Pahang opposed the petition, arguing that their pending action for annulment of extrajudicial sale tolled the running of the one (1)-year period of redemption.⁸⁵

Rejecting the argument of the Spouses Pahang, this Court held that the “filing of an action by the redemptioner to enforce his right to redeem does not suspend the running of the statutory period to redeem the property.”⁸⁶ This Court added that upon the lapse of the one (1)-year period of redemption, it is the trial court’s ministerial duty to issue a writ of possession to the purchaser at the foreclosure sale.⁸⁷

Here, the Certificate of Sale in favor of Dura Tire was registered on February 20, 1995. Mahinay, as the successor-in-interest of previous owner A&A Swiss, had one (1) year from February 20, 1995, or on February 20, 1996,⁸⁸ to exercise his right of redemption and buy back the property from Dura Tire at the bid price of ₱950,000.00.

With Mahinay failing to redeem the property within the one (1)-year period of redemption, his right to redeem had already lapsed. As discussed, the pendency of an action to annul the foreclosure sale or to enforce the right to redeem does not toll the running of the period of redemption. The trial court correctly dismissed the Complaint for judicial declaration of right to redeem.

Mahinay nevertheless cites *Consolidated Bank & Trust Corp. v. Intermediate Appellate Court*⁸⁹ in arguing that the one (1)-year period of redemption was tolled when he filed the Complaint for annulment of foreclosure sale. In *Consolidated Bank*, Nicos Industrial Corporation mortgaged parcels of land to Consolidated Bank to secure loans totalling ₱4,076,518.64. When the corporation failed to pay, Consolidated Bank applied for the extrajudicial foreclosure of the properties.⁹⁰

Writs of attachment were issued in favor of Consolidated Bank and Notices of Levy were annotated on the transfer certificates of title covering the mortgaged properties. However, a year later, the properties were subsequently foreclosed by first mortgagee United Coconut Planters Bank,

⁸⁵ Id. at 194.

⁸⁶ Id. at 199.

⁸⁷ Id.

⁸⁸ CIVIL CODE, art. 13 provides:

Article 13. When the laws speak of years, months, days or nights, it shall be understood that years are of three hundred sixty-five days each; months, of thirty days; days, of twenty-four hours; and nights from sunset to sunrise.

If months are designated by their name, they shall be computed by the number of days which they respectively have.

In computing a period, the first day shall be excluded, and the last day included.

⁸⁹ 234 Phil. 582 (1987) [Per J. Gutierrez, Jr., First Division].

⁹⁰ Id. at 583–584.

and a certificate of sale was issued to the latter on September 6, 1983. A month later, the United Coconut Planters Bank sold the properties to Manuel Go, who, in turn, sold the properties to Golden Star Industrial Corporation. Nicos then executed a Waiver of Right of Redemption in favor of Golden Star.⁹¹

Golden Star then filed a petition for issuance of a writ of possession over the properties. The writ of possession was issued, allowing Golden Star to seize the properties under the custody of the Sheriff of Manila.⁹²

Consolidated Bank then filed a motion to annul the writ of possession on November 21, 1983. On a petition for review on certiorari before this Court, Golden Star argued, among others, that Consolidated Bank had no right to possess the properties. At that time, one (1) year from the registration of the certificate of sale had already lapsed.⁹³

This Court held that Consolidated Bank's filing of the motion to annul the writ of possession tolled the running of the one (1)-year period of redemption.⁹⁴ This Court found that Nicos and Golden Star "conspired to defeat [Consolidated Bank's] lien on the attached properties and to deny the latter its right of redemption."⁹⁵ Considering that Consolidated Bank filed its motion to annul the writ of possession on November 21, 1983, just two (2) months after the certificate of sale was registered on September 6, 1983, this Court held that Consolidated Bank may still redeem the properties from Golden Star.⁹⁶

Consolidated Bank is not precedent for the present case.

Consolidated Bank cited *Ong Chua v. Carr*,⁹⁷ an inapplicable case, as basis for ruling that "the pendency of an action tolls the term of the right of redemption."⁹⁸ *Ong Chua* involved a sale with right to repurchase,⁹⁹ and the period of the "right of redemption" referred to in that case was governed by the provisions of the Civil Code on conventional redemption, specifically, Articles 1601 and 1606.¹⁰⁰ On the other hand, the present case involves the

⁹¹ Id. at 584–585.

⁹² Id. at 585.

⁹³ Id. at 585–587.

⁹⁴ Id. at 590.

⁹⁵ Id. at 589.

⁹⁶ Id. at 591.

⁹⁷ 53 Phil. 975 (1929) [Per J. Ostrand, En Banc].

⁹⁸ *Consolidated Bank and Trust Corporation v. Intermediate Appellate Court*, 234 Phil. 582, 590 (1987) [Per J. Gutierrez, Jr., First Division] citing *Ong Chua v. Carr*, 53 Phil. 975, 983 (1929) [Per J. Ostrand, En Banc].

⁹⁹ *Ong Chua v. Carr*, 53 Phil. 975, 976 (1929) [Per J. Ostrand, En Banc].

¹⁰⁰ CIVIL CODE, arts. 1601 and 1606 provide:

redemption of an extrajudicially foreclosed property. The right of redemption involved in this case is governed by Section 6 of Act No. 3135.

The respondents in *Consolidated Bank* actively denied the petitioner its right of redemption.¹⁰¹ This Court, therefore, held that the petitioner in *Consolidated Bank* was a victim of fraud.¹⁰² No such fraud exists in the present case.

Moreover, the previously discussed cases of *CMS Stock Brokerage*¹⁰³ and *Spouses Pahang*¹⁰⁴ were promulgated later than *Consolidated Bank*.¹⁰⁵ That the pendency of an action questioning the legality of the foreclosure sale or enforcing the right of redemption does not toll the running of the period of redemption must be the controlling doctrine.

All told, the trial court correctly dismissed Mahinay's Complaint for judicial declaration of right to redeem. To grant the Complaint would have extended the period of redemption for Mahinay, in contravention of the fixed one (1)-year period provided in Act No. 3135.

WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The Judgment on the Pleadings dated April 13, 2010 and Order dated September 2, 2010 rendered by Branch 20 of the Regional Trial Court of Cebu City in Civil Case No. CEB-33639 are **AFFIRMED**.

SO ORDERED.


MARVIC M.V.F. LEONEN
Associate Justice

Article 1601. Conventional redemption shall take place when the vendor reserves the right to repurchase the thing sold, with the obligation to comply with the provisions of Article 1616 and other stipulations which may have been agreed upon.

....

Article 1606. The right referred to in Article 1601, in the absence of an express agreement, shall last four years from the date of the contract.

Should there be an agreement, the period cannot exceed ten years.

However, the vendor may still exercise the right to repurchase within thirty days from the time final judgment was rendered in a civil action on the basis that the contract was a true sale with right to repurchase.

¹⁰¹ *Consolidated Bank and Trust Corporation v. Intermediate Appellate Court*, 234 Phil. 582, 589 (1987) [Per J. Gutierrez, Jr., First Division]. See *CMS Stock Brokerage, Inc. v. Court of Appeals*, 341 Phil. 787, 800 (1997) [Per J. Melo, Third Division].

¹⁰² See *CMS Stock Brokerage, Inc. v. Court of Appeals*, 341 Phil. 787, 800 (1997) [Per J. Melo, Third Division].

¹⁰³ *CMS Stock Brokerage* was promulgated in 1997.

¹⁰⁴ *Spouses Pahang* was promulgated in 2004.

¹⁰⁵ *Consolidated Bank* was promulgated in 1987.

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice

On official leave

JOSE CATRAL MENDOZA
Associate Justice

On official leave

SAMUEL R. MARTIRES
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice