



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

SPOUSES CHARLIE FORTALEZA
and OFELIA FORTALEZA,

Petitioners,

G.R. No. 178288

Present:

CARPIO, J.,*
LEONARDO-DE CASTRO,**
Acting Chairperson,

BERSAMIN,
DEL CASTILLO, *and*
VILLARAMA, JR., JJ.

- versus -

SPOUSES RAUL LAPITAN
and RONA LAPITAN,

Respondents.

Promulgated:

15 AUG 2012

x-----x

DECISION

DEL CASTILLO, J.:

Unless a case falls under recognized exceptions provided by law and jurisprudence, courts should maintain the *ex parte*, non-adversarial, summary and ministerial nature of the issuance of a writ of possession.

Assailed in this Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court is the Decision² of the Court of Appeals (CA) dated January 10, 2007 in CA-G.R. CV No. 86287 which affirmed the Order³ of the Regional Trial Court (RTC) of Calamba City, Branch 35, dated September 16, 2005 in SLRC Case No. 2528-2004-C granting an *ex parte* petition for the issuance of writ of possession. Likewise assailed is the CA Resolution⁴ dated June 6, 2007 which denied the Motion for Reconsideration⁵ of the said assailed Decision. *Mor*

¹ Per Special Order No. 1284 dated August 6, 2012.

² Per Special Order No. 1226 dated May 30, 2012.

³ *Rollo*, pp. 11-12.

⁴ *CA rollo*, pp. 337-346; penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Josefina Guevara-Salonga and Vicente Q. Roxas.

⁵ *Rollo*, pp. 85-89; penned by Judge Romeo C. de Leon.

⁶ *CA rollo*, pp. 388-389.

⁷ *Id.* at 349-368.

Factual Antecedents

Spouses Charlie and Ofelia Fortaleza (spouses Fortaleza) obtained a loan from spouses Rolando and Amparo Lapitan (creditors) in the amount of ₱1.2 million subject to 34% interest *per annum*. As security, spouses Fortaleza executed on January 28, 1998 a Deed of Real Estate Mortgage⁶ over their residential house and lot situated in Barrio Anos, Municipality of Los Baños, Laguna (subject property) registered under Transfer Certificate of Title (TCT) No. T-412512.⁷

When spouses Fortaleza failed to pay the indebtedness including the interests and penalties, the creditors applied for extrajudicial foreclosure of the Real Estate Mortgage before the Office of the Clerk of Court and Ex-Officio Sheriff of Calamba City. The public auction sale was set on May 9, 2001.

At the sale, the creditors’ son Dr. Raul Lapitan and his wife Rona (spouses Lapitan) emerged as the highest bidders with the bid amount of ₱2.5 million. Then, they were issued a Certificate of Sale⁸ which was registered with the Registry of Deeds of Calamba City and annotated at the back of TCT No. T-

⁶ *Rollo*, pp. 166-167. Real Estate Mortgage:
That the MORTGAGORS hereby acknowledge being indebted unto the MORTGAGEE[S] in the total sum of ONE MILLION TWO HUNDRED THOUSAND PESOS (₱1,200,000.00) x x x which debt the MORTGAGORS undertake and promise to pay to the [MORTGAGEE] within a period of SIX MONTHS from signing hereof, without need of demand, with an interest at the bank rate of 34%. Provided that if the MORTGAGORS fail to pay their indebtedness when due, the MORTGAGEE[S] may extend the period of payment for another SIX (6) MONTHS, on the condition that the MORTGAGORS will pay the accrued interest thereon and part of the principal loan amount.
That, as security for the full payment of the above indebtedness of ₱1,200,000.00 plus accrued interest, the MORTGAGORS hereby transfers [sic] and conveys [sic] by way [of] First Mortgage in favor of the MORTGAGEE[S], [their] heirs and assigns, a certain parcel of land situated and a residential house both at Bo. Anos, Los Baños, Laguna embraced under Transfer Certificate of Title No. T-412512 and Tax Declaration No. 002-3789 x x x.
x x x x
Provided that if the total indebtedness of ₱1,200,000.00 plus the accrued interest is not paid within the specified period of SIX (6) MONTHS from signing hereof, or its SIX (6) MONTHS extension, then this mortgage shall be immediately foreclosed either judicially or extrajudicially as provided by law at the option of the MORTGAGEE[S]. For this purpose the MORTGAGEE[S] [are] hereby appointed and constituted attorney[s]-in-fact of the MORTGAGORS with full power and authority to take possession of the mortgaged property and sell the same at public auction x x x.
⁷ Id. at 160-163.
⁸ Issued on October 24, 2002, id. at 164-165.

412512 under Entry No. 615683 on November 15, 2002.⁹

The one-year redemption period expired without the spouses Fortaleza redeeming the mortgage. Thus, spouses Lapitan executed an affidavit of consolidation of ownership on November 20, 2003 and caused the cancellation of TCT No. T-412512 and the registration of the subject property in their names under TCT No. T-535945¹⁰ on February 4, 2004. Despite the foregoing, the spouses Fortaleza refused spouses Lapitan's formal demand¹¹ to vacate and surrender possession of the subject property.

Proceedings before the Regional Trial Court

On August 27, 2004, spouses Lapitan filed an *ex parte* petition for the issuance of writ of possession with Branch 35 of the RTC of Calamba City docketed as SLRC Case No. 2528-2004-C.¹² As new registered owners of the subject property, spouses Lapitan claimed that they were entitled to its possession pursuant to Section 7 of Act No. 3135,¹³ as amended by Act No. 4118.

In their opposition,¹⁴ spouses Fortaleza questioned the validity of the real estate mortgage and the foreclosure sale. They argued that the mortgage was void because the creditors bloated the principal amount by the imposition of exorbitant interest. Spouses Fortaleza added that the foreclosure proceeding was invalid for non-compliance with the posting requirement.

Later, for repeated failure of spouses Fortaleza to appear at the scheduled hearings, the RTC allowed spouses Lapitan to present evidence *ex parte*.

⁹ Id. at 163.

¹⁰ Id. at 157.

¹¹ Demand Letter dated August 17, 2004, id. at 168.

¹² Id. at 57-61.

¹³ An Act to Regulate the Sale of Property under Special Powers Inserted In or Annexed to Real Estate Mortgages. Approved March 6, 1924.

¹⁴ *Rollo*, pp. 63-68.

Eventually, on September 16, 2005, the RTC ordered the issuance of a writ of possession explaining that it is a ministerial duty of the court especially since the redemption period had expired and a new title had already been issued in the name of the spouses Lapitan, thus:

WHEREFORE, premises considered, the Opposition with counterclaim filed by the respondents is denied while this instant petition is hereby granted.

Accordingly, the Branch Clerk of Court is hereby ordered to issue a Writ of Possession directing the provincial sheriff of Laguna to place the petitioner in possession of the above described property free from any adverse occupants thereof.

SO ORDERED.¹⁵

Spouses Fortaleza moved for reconsideration,¹⁶ claiming that the subject property is their family home and is exempt from foreclosure sale. On October 11, 2005, however, the RTC issued an Order¹⁷ denying their motion. Accordingly, the branch clerk of court issued the Writ of Possession¹⁸ and the sheriff served the corresponding Notice to Vacate¹⁹ against spouses Fortaleza.

Proceedings before the Court of Appeals

Dissatisfied, spouses Fortaleza elevated the case to the CA *via* Rule 41 of the Rules of Court docketed as CA-G.R. CV No. 86287. With the perfection of an appeal, the RTC held in abeyance the implementation of the writ.²⁰ After the parties submitted their respective briefs, the CA rendered the assailed Decision²¹ dated January 10, 2007 dismissing the appeal:

WHEREFORE, the appeal is hereby DISMISSED. The Order dated September 16, 2005 of the Regional Trial Court, Branch 35, Calamba City in

¹⁵ Id. at 88-89.

¹⁶ See Motion for Reconsideration dated September 19, 2005, id. at 90-93.

¹⁷ Id. at 106-108.

¹⁸ Id. at 109-110.

¹⁹ Id. at 111.

²⁰ See Order dated October 26, 2005, id. at 113.

²¹ CA *rollo*, pp. 337-346.

SLRC Case No. 2528-2004-SC, is AFFIRMED. The court a quo is DIRECTED to enforce the Writ of Possession it issued on October 24, 2005.

SO ORDERED.²²

In affirming the ruling of the RTC, the CA stressed that any question regarding the regularity and validity of the mortgage or its foreclosure cannot be raised as a justification for opposing the issuance of the writ of possession since the proceedings is *ex parte* and non-litigious. Moreover, until the foreclosure sale is annulled, the issuance of the writ of possession is ministerial.

Issues

Unsuccessful with their quest to have the CA reconsider its Decision,²³ spouses Fortaleza filed this petition for review on *certiorari*²⁴ raising the following errors:

I

WHETHER X X X THE HONORABLE COURT OF APPEALS VIOLATED THE TWO (2)-RAFFLE RULE PRESCRIBED BY AND LONG ESTABLISHED UNDER THE REVISED INTERNAL RULES OF THE COURT OF APPEALS WHEN IT IMMEDIATELY RENDERED THE ASSAILED DECISION BARELY AFTER THE SUBMISSION OF THE PARTIES' BRIEFS. IN SO DOING, THE HONORABLE COURT OF APPEALS ENGAGED IN PROCEDURAL SHORTCUTS AND ACTED WITH UNDUE HASTE AND INDECENT SPEED, THUS RENDERING ITS DECISION AS NULL AND VOID AND CHARACTERIZED BY MANIFEST BIAS AND PARTIALITY TO THE RESPONDENTS.

II

WHETHER X X X THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS REVERSIBLE ERROR IN UPHOLDING THE TRIAL COURT'S ISSUANCE OF A WRIT OF POSSESSION DESPITE THE FACT THAT THE RESPONDENTS FAILED TO ESTABLISH THEIR ENTITLEMENT TO THE ISSUANCE OF SAID WRIT, THE NON-COMPLIANCE BY THE ORIGINAL MORTGAGORS AND THE RESPONDENTS OF THE STATUTORY REQUIREMENTS OF EXTRAJUDICIAL FORECLOSURE OF MORTGAGE UNDER ACT NO. 3135, AND THE FATAL DEFECTS OF THE FORECLOSURE PROCEEDINGS.

²² Id. at 345.

²³ See Resolution dated June 6, 2007, id. at 388-389.

²⁴ *Rollo*, pp. 11-42.

III

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT THE PETITIONERS WERE PREVENTED BY THE RESPONDENTS FROM EXERCISING THEIR RIGHT OF REDEMPTION OVER THE FORECLOSED PROPERTY BY DEMANDING A REDEMPTION PRICE OF A HIGHLY INEQUITABLE AND MORE THAN DOUBLE THE AMOUNT OF THE FORECLOSED PROPERTY, ESPECIALLY THAT THE FORECLOSED MORTGAGED PROPERTY IS THE FAMILY HOME OF PETITIONERS AND THEIR CHILDREN.²⁵

First, spouses Fortaleza point out that the CA violated its own 2002 Internal Rules of Procedure when it decided the case without passing the two-raffle system. They claim that the justice assigned in the completion stage also decided the case on the merits. This procedural shortcut, according to spouses Fortaleza, evinces the appellate court's bias and prejudgment in favor of the spouses Lapitan.

Second, citing *Barican v. Intermediate Appellate Court*²⁶ and *Cometa v. Intermediate Appellate Court*,²⁷ and reiterating the irregularities that allegedly attended the foreclosure sale, the spouses Fortaleza insist that the issuance of writ of possession is not always ministerial and the trial court should have accorded them opportunity to present contrary evidence.

Last, spouses Fortaleza maintain that the subject property is a family home exempt from forced sale. Hence, in the spirit of equity and following the rulings in *Tolentino v. Court of Appeals*,²⁸ and *De los Reyes v. Intermediate Appellate Court*,²⁹ the Court should allow them to exercise the right of redemption even after the expiration of the one-year period.

Our Ruling

On Matters of Procedure

²⁵ Id. at 236-237.

²⁶ 245 Phil. 316 (1988).

²⁷ 235 Phil. 569 (1987).

²⁸ 193 Phil. 663 (1981).

²⁹ 257 Phil. 406 (1989).

True, under the 2002 Internal Rules of the Court of Appeals (IRCA), appealed civil cases undergo two-raffle system. First, a preliminary raffle is held to determine the Justice to whom the case will be assigned for completion of records. After completion, a second raffle is conducted to determine the Justice to whom the case will be assigned for study and report. “Each stage is distinct [and] it may happen that the Justice to whom the case was initially raffled for completion may not be the same Justice who will write the decision thereon.”³⁰ Thus:

Section 2. Raffle of Cases. –

(a) Assignment of cases to a Justice, whether for completion of records or for study and report, shall be by raffle, subject to the following rules:

(1) Appealed cases for completion of records shall be raffled to individual Justices; (Sec. 5(a), Rule 3, RIRCA [a])

(1.1) Records are deemed completed upon filing of the required briefs or memoranda or the expiration of the period for the filing thereof and resolution of all pending incidents. **Thereupon, the Division Clerk of Court shall report the case to the Justice concerned for the issuance of a resolution declaring the case submitted for decision and referring the same to the Raffle Committee for raffle to a Justice for study and report;** (Sec. 5(b), Rule 3, RIRCA [a]).³¹ (Emphasis supplied.)

However, the two-raffle system is already abandoned under the 2009 IRCA. As the rule now stands, the Justice to whom a case is raffled shall act on it both at the completion stage and for the decision on the merits, thus:

SEC. 2. Raffle of Cases. –

(a) Cases shall be assigned to a Justice by raffle for completion of records, study and report, subject to the following rules:

(1) Cases, whether original or appealed, shall be raffled to individual justices;

(1.1) Records are deemed completed upon filing of the required pleadings, briefs or memoranda or the expiration of the period for

³⁰ *De Liano v. Court of Appeals*, 421 Phil. 1033, 1050-1051 (2001).

³¹ Sec. 2, Rule 111, 2002 INTERNAL RULES OF THE COURT OF APPEALS, as amended.

the filing thereof and resolution of all pending incidents. **Upon such completion, the Division Clerk of Court shall report the case to the Justice concerned for the issuance of a resolution declaring the case submitted for decision.**³² (Emphasis supplied.)

Corollarily, the alleged defect in the processing of this case before the CA has been effectively cured. We stress that rules of procedure may be modified at any time and become effective at once, so long as the change does not affect vested rights.³³ Moreover, it is equally axiomatic that there are no vested rights to rules of procedure.³⁴ Thus, unless spouses Fortaleza can establish a right by virtue of some statute or law, the alleged violation is not an actionable wrong.³⁵ At any rate, the 2002 IRCA does not provide for the effect of non-compliance with the two-raffle system on the validity of the decision. Notably too, it does not prohibit the assignment by raffle of a case for study and report to a Justice who handled the same during its completion stage.

We also find that personal bias and prejudgment cannot be inferred from the alleged breach of internal rules. It is settled that clear and convincing evidence is required to prove bias and prejudice.³⁶ Bare allegations and mere suspicions of partiality are not enough in the absence of evidence to overcome the presumption that a member of the court will undertake his noble role to dispense justice according to law and evidence and without fear or favor.³⁷ Moreover, no acts or conduct of the division or the *ponente* was shown to indicate any arbitrariness against the spouses Fortaleza. What is extant is that the opinions formed in the course of judicial proceedings are all based on the evidence presented.

On the Issuance of Writ of Possession

³² Sec. 2, Rule 111, 2009 INTERNAL RULES OF THE COURT OF APPEALS.

³³ *Aguillon v. Director of Lands*, 17 Phil. 506, 508 (1910); *Laurel v. Misa*, 76 Phil. 372, 378 (1946).

³⁴ *Alindao v. Hon. Joson*, 332 Phil. 239, 251 (1996).

³⁵ See *Olsen & Co. v. Herstein and Rafferty*, 32 Phil. 520, 531 (1915).

³⁶ *Rockwell Perfecto Gohu v. Spouses Gohu*, 397 Phil. 126, 132 (2000).

³⁷ *Heirs of Generoso A. Juaban v. Bancale*, G.R. No. 156011, July 3, 2008, 557 SCRA 1, 13. See also *People v. Governor Kho*, 409 Phil. 326, 336 (2001), citing *Go v. Court of Appeals*, G.R. No. 106087, April 7, 1993, 221 SCRA 397, 409-410; *Abad v. Judge Belen*, 310 Phil. 832, 836 (1995); *Webb v. People*, 342 Phil. 206, 216 (1997); *People v. Court of Appeals*, 369 Phil. 150, 158 (1999).

Spouses Fortaleza claim that the RTC grievously erred in ignoring the apparent nullity of the mortgage and the subsequent foreclosure sale. For them, the RTC should have heard and considered these matters in deciding the case on its merits. They relied on the cases of *Barican*³⁸ and *Cometa*³⁹ in taking exception to the ministerial duty of the trial court to grant a writ of possession.

But the cited authorities are not on all fours with this case. In *Barican*, we held that the obligation of a court to issue a writ of possession ceases to be ministerial if there is a third party holding the property adversely to the judgment debtor. Where such third party exists, the trial court should conduct a hearing to determine the nature of his adverse possession. And in *Cometa*, there was a pending action where the validity of the levy and sale of the properties in question were directly put in issue which this Court found pre-emptive of resolution. For if the applicant for a writ of possession acquired no interest in the property by virtue of the levy and sale, then, he is not entitled to its possession. Moreover, it is undisputed that the properties subject of said case were sold at an unusually lower price than their true value. Thus, equitable considerations motivated this Court to withhold the issuance of the writ of possession to prevent injustice on the other party.

Here, there are no third parties holding the subject property adversely to the judgment debtor. It was spouses Fortaleza themselves as debtors-mortgagors who are occupying the subject property. They are not even strangers to the foreclosure proceedings in which the *ex parte* writ of possession was applied for. Significantly, spouses Fortaleza did not file any direct action for annulment of the foreclosure sale of the subject property. Also, the peculiar circumstance of gross inadequacy of the purchase price is absent.

Accordingly, unless a case falls under recognized exceptions provided by

³⁸ Supra note 26.

³⁹ Supra note 27.

law⁴⁰ and jurisprudence,⁴¹ we maintain the *ex parte*, non-adversarial, summary and ministerial nature of the issuance of a writ of possession as outlined in Section 7 of Act No. 3135, as amended by Act No. 4118, which provides:

SECTION 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof **during the redemption period**, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. **Such petition shall be made under oath and filed in form of an *ex parte* motion** x x x and the court shall, upon approval of the bond, **order that a writ of possession issue**, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately. (Emphasis supplied.)

Under the provision cited above, the purchaser in a foreclosure sale may apply for a writ of possession during the redemption period. Notably, in this case, the one-year period for the spouses Fortaleza to redeem the mortgaged property had already lapsed. Furthermore, ownership of the subject property had already been consolidated and a new certificate of title had been issued under the name of the spouses Lapitan. Hence, as the new registered owners of the subject property, they are even more entitled to its possession and have the unmistakable right to file an *ex parte* motion for the issuance of a writ of possession. As aptly explained in *Edralin v. Philippine Veterans Bank*,⁴² the duty of the trial court to grant a writ of possession in such instances is ministerial, and the court may not exercise discretion or judgment, thus:

Consequently, the purchaser, who has a right to possession after the expiration of the redemption period, becomes the absolute owner of the property when no redemption is made. x x x The purchaser can demand possession at any time following the consolidation of ownership in his name and the issuance to him of a new TCT. After consolidation of title in the purchaser's name for failure of the mortgagor to redeem the property, the purchaser's right to possession ripens into the absolute right of a confirmed owner. **At that point, the issuance**

⁴⁰ RULES OF COURT, Rule 39, Section 35, which is made applicable to the extrajudicial foreclosure of real estate mortgages by Section 6 of Act 3135.

⁴¹ See *Metropolitan Bank and Trust Co. v. Lamb Construction Consortium Corporation*, G.R. No. 170906, November 27, 2009, 606 SCRA 159; *Cometa v. Intermediate Appellate Court*, supra note 27; *Sulit v. Court of Appeals*, 335 Phil. 914 (1997).

⁴² G.R. No. 168523, March 9, 2011, 645 SCRA 75, 85-86.

of a writ of possession, upon proper application and proof of title becomes merely a ministerial function. Effectively, the court cannot exercise its discretion. (Emphasis in the original.)

In this case, spouses Lapitan sufficiently established their right to the writ of possession. More specifically, they presented the following documentary exhibits: (1) the Certificate of Sale and its annotation at the back of spouses Fortaleza's TCT No. T-412512; (2) the Affidavit of Consolidation proving that spouses Fortaleza failed to redeem the property within the one-year redemption period; (3) TCT No. T-535945 issued in their names; and, (4) the formal demand on spouses Fortaleza to vacate the subject property.

Lastly, we agree with the CA that any question regarding the regularity and validity of the mortgage or its foreclosure cannot be raised as a justification for opposing the petition for the issuance of the writ of possession.⁴³ The said issues may be raised and determined only after the issuance of the writ of possession.⁴⁴ Indeed, "[t]he judge with whom an application for writ of possession is filed need not look into the validity of the mortgage or the manner of its foreclosure."⁴⁵ The writ issues as a matter of course. "The rationale for the rule is to allow the purchaser to have possession of the foreclosed property without delay, such possession being founded on the right of ownership."⁴⁶ To underscore this mandate, Section 8⁴⁷ of Act No. 3135 gives the debtor-mortgagor the right to file a petition for the setting aside of the foreclosure sale and for the cancellation of a writ of possession in the same proceedings where the writ was issued within 30

⁴³ See *Chailease Finance Corporation v. Spouses Ma*, 456 Phil. 498, 505-506 (2003).

⁴⁴ *Samson v. Rivera*, G.R. No. 154355, May 20, 2004, 428 SCRA 759, 768.

⁴⁵ *Fernandez v. Espinoza*, G.R. No. 156421, April 14, 2008, 551 SCRA 136, 149.

⁴⁶ *Bank of the Philippine Islands v. Tarampi*, G.R. No. 174988, December 10, 2008, 573 SCRA 537, 543-544, citing *Spouses Ong v. Court of Appeals*, 388 Phil. 857, 865 (2000).

⁴⁷ Section 8. *Setting aside of sale and writ of possession*. – **The debtor may, in the proceedings in which possession was requested**, but not later than thirty days after the purchaser was given possession, **petition that the sale be set aside and the writ of possession cancelled**, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal. (Emphases supplied.)

days after the purchaser-mortgagee was given possession. The court's decision thereon may be appealed by either party, but the order of possession shall continue in effect during the pendency of the appeal.

“Clearly then, until the foreclosure sale of the property in question is annulled by a court of competent jurisdiction, the issuance of a writ of possession remains the ministerial duty of the trial court. The same is true with its implementation; otherwise, the writ will be a useless paper judgment – a result inimical to the mandate of Act No. 3135 to vest possession in the purchaser immediately.”⁴⁸

*On exemption of the subject property
and the exercise of right of redemption*

Spouses Fortaleza's argument that the subject property is exempt from forced sale because it is a family home deserves scant consideration. As a rule, the family home is exempt from execution, forced sale or attachment.⁴⁹ However, Article 155(3) of the Family Code explicitly allows the forced sale of a family home “*for debts secured by mortgages on the premises before or after such constitution.*” In this case, there is no doubt that spouses Fortaleza voluntarily executed on January 28, 1998 a deed of Real Estate Mortgage over the subject property which was even notarized by their original counsel of record. And assuming that the property is exempt from forced sale, spouses Fortaleza did not set up and prove to the Sheriff such exemption from forced sale before it was sold at the public auction. As elucidated in *Honrado v. Court of Appeals*:⁵⁰

While it is true that the family home is constituted on a house and lot from the time it is occupied as a family residence and is exempt from execution or forced sale under Article 153 of the Family Code, such claim for exemption should be set up and proved to the Sheriff before the sale of the property at public auction. **Failure to do so would estop the party from later claiming the**

⁴⁸ *Bank of the Philippine Islands v. Tarampi*, supra note 46 at 544, citing *Chailease Finance Corporation v. Spouses Ma*, supra note 43.

⁴⁹ See Article 155 of the FAMILY CODE.

⁵⁰ 512 Phil. 657 (2005).

exemption. As this Court ruled in *Gomez v. Gealone*:

Although the Rules of Court does not prescribe the period within which to claim the exemption, the rule is, nevertheless, well-settled that the right of exemption is a personal privilege granted to the judgment debtor and as such, it must be claimed not by the sheriff, but by the debtor himself at the time of the levy or within a reasonable period thereafter[.]⁵¹ (Emphasis supplied.)

Certainly, reasonable time for purposes of the law on exemption does not mean a time after the expiration of the one-year period for a judgment debtor to redeem the property.⁵²

Equally without merit is spouses Fortaleza's reliance on the cases of *Tolentino*⁵³ and *De Los Reyes*⁵⁴ in praying for the exercise of the right of redemption even after the expiration of the one-year period. In *Tolentino*, we held that an action to redeem filed within the period of redemption, with a simultaneous deposit of the redemption money tendered to the sheriff, is equivalent to an offer to redeem and has the effect of preserving the right to redemption for future enforcement even beyond the one-year period.⁵⁵ And in *De Los Reyes*, we allowed the mortgagor to redeem the disputed property after finding that the tender of the redemption price to the sheriff was made within the one-year period and for a sufficient amount.

The circumstances in the present case are far different. The spouses Fortaleza neither filed an action nor made a formal offer to redeem the subject property accompanied by an actual and simultaneous tender of payment. It is also undisputed that they allowed the one-year period to lapse from the registration of the certificate of sale without redeeming the mortgage. For all intents and purposes, spouses Fortaleza have waived or abandoned their right of redemption. Although the rule on redemption is liberally interpreted in favor of the original

⁵¹ Id. at 666.

⁵² *Spouses De Mesa v. Spouses Acero*, G.R. No. 185064, January 16, 2012.

⁵³ Supra note 28.

⁵⁴ Supra note 29.

⁵⁵ See also *Belisario v. Intermediate Appellate Court*, 247-A Phil. 184 (1988).

owner of the property, we cannot apply the privilege of liberality to accommodate the spouses Fortaleza due to their negligence or omission to exercise the right of redemption within the prescribed period without justifiable cause.

WHEREFORE, premises considered, the petition is **DENIED**. The Decision dated January 10, 2007 and Resolution dated June 6, 2007 of the Court of Appeals in CA-G.R. CV No. 86287 are **AFFIRMED**.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Senior Associate Justice


TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson


LUCAS P. BERSAMIN
Associate Justice


MARTIN S. VILLARAMA, JR.
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.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO

Associate Justice
Acting Chairperson

CERTIFICATION

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.

Antonio T. Carpio

ANTONIO T. CARPIO

Senior Associate Justice

(Per Section 12, R.A. 296,

The Judiciary Act of 1948, as amended)

Mall