



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

SPOUSES RODOLFO and G.R. No. 204672  
MARCELINA GUEVARRA,

Petitioners, Present:

- versus -

SERENO, C.J., Chairperson,  
LEONARDO-DE CASTRO,  
BERSAMIN,  
PEREZ, and  
PERLAS-BERNABE, JJ.

THE COMMONER LENDING  
CORPORATION, INC.,

Respondent.

Promulgated:

FEB 18 2015

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DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*<sup>1</sup> are the Decision<sup>2</sup> dated October 3, 2011 and the Resolution<sup>3</sup> dated October 17, 2012 of the Court of Appeals (CA) in CA-G.R. CV No. 02895, which affirmed with modification the Order<sup>4</sup> dated October 20, 2008 of the Regional Trial Court of Guimbal, Iloilo, Branch 67 (RTC) in Cadastral Case Nos. 118 and 122, allowing petitioners-spouses Rodolfo and Marcelina Guevarra (Sps. Guevarra) to exercise their right to repurchase the mortgaged property subject of this case, conditioned upon the payment of the purchase price fixed by respondent The Commoner Lending Corporation, Inc. (TCLC).

<sup>1</sup> Rollo, pp. 9-22.

<sup>2</sup> Id. at 27-36. Penned by Associate Justice Eduardo B. Peralta, Jr. with Acting Executive Justice Pampio A. Abarintos and Associate Justice Gabriel T. Ingles concurring.

<sup>3</sup> Id. at 38-39. Penned by Acting Executive Justice Pampio A. Abarintos with Associate Justices Gabriel T. Ingles and Carmelita Salandanan Manahan concurring.

<sup>4</sup> Records (Cadastral Case No. 118), pp. 100-102. Penned by Judge Domingo D. Diamante.

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### The Facts

On December 16, 1996,<sup>5</sup> Sps. Guevarra obtained a ₱320,000.00 loan from TCLC, which was secured by a real estate mortgage<sup>6</sup> over a 5,532-square meter parcel of land situated in Guimbal, Iloilo, covered by Original Certificate of Title (OCT) No. F-31900<sup>7</sup> (subject property), emanating from a free patent granted to Sps. Guevarra on February 25, 1986.<sup>8</sup>

Sps. Guevarra, however, defaulted in the payment of their loan, prompting TCLC to extra-judicially foreclose the mortgage on the subject property<sup>9</sup> in accordance with Act No. 3135,<sup>10</sup> as amended. In the process, TCLC emerged as the highest bidder at the public auction sale held on June 15, 2000 for the bid amount of ₱150,000.00,<sup>11</sup> and on August 25, 2000, the certificate of sale was registered with the Registry of Deeds of Iloilo.<sup>12</sup>

Eventually, Sps. Guevarra failed to redeem the subject property within the one-year reglementary period, which led to the cancellation of OCT No. F-31900 and the issuance of Transfer Certificate of Title No. T-16187<sup>13</sup> in the name of TCLC. Thereafter, TCLC demanded that Sps. Guevarra vacate the property, but to no avail.<sup>14</sup>

### The RTC Proceedings

On June 10, 2005, TCLC applied for a writ of possession<sup>15</sup> before the RTC, docketed as Cadastral Case No. 118. Sps. Guevarra opposed<sup>16</sup> the same by challenging the validity of the foreclosure proceedings due to the purported failure of TCLC to comply with the notice, posting and publication requirements, and lack of authority, as a corporation, to acquire the subject property. Sps. Guevarra also assailed the issuance by the Sheriff of Iloilo of a Final Deed of Sale<sup>17</sup> to be premature, as they were still entitled to redeem the subject property within five (5) years from the expiration of the one-year period to repurchase.<sup>18</sup>

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<sup>5</sup> See Promissory Note No. 5721 dated December 16, 1996 for ₱377,600.00 inclusive of interest; records (Cadastral Case No. 122), p. 15. The same was stated as December 12, 1996 in the CA Decision; *rollo*, p. 27.

<sup>6</sup> Dated December 12, 1996. Records (Cadastral Case No. 118), pp. 12-14.

<sup>7</sup> *Rollo*, pp. 55-57 (including dorsal portions).

<sup>8</sup> *Id.* at 27-28.

<sup>9</sup> *Id.* at 28.

<sup>10</sup> Entitled "AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES" (March 6, 1924).

<sup>11</sup> See Certificate of Sale at Public Auction; *rollo*, pp. 49-50.

<sup>12</sup> *Id.* at 28.

<sup>13</sup> *Id.* at 58.

<sup>14</sup> *Id.* at 28.

<sup>15</sup> See Petition for Issuance of Writ of Possession; records (Cadastral Case No. 118), pp. 5-8.

<sup>16</sup> See Opposition (to Petition for Issuance of Writ of Possession) filed on July 28, 2005; *id.* at 21-25.

<sup>17</sup> *Id.* at 17-18. Issued by Ex-Officio Provincial Sheriff and Clerk of Court VII Magdalena L. Lometillo on September 6, 2001.

<sup>18</sup> *Id.* at 22.

Subsequently, or on September 8, 2005, Sps. Guevarra filed before the RTC a petition for redemption,<sup>19</sup> docketed as Cadastral Case No. 122, maintaining that the redemption period did not expire on August 25, 2001, or one (1) year from the registration of the certificate of sale, but will still expire five (5) years therefrom, or on August 25, 2006.<sup>20</sup> They further averred that they pleaded to be allowed to redeem the subject property but TCLC unjustifiably refused the same, constraining them to file said petition, offering to redeem the subject property at ₱150,000.00, plus one percent (1%) interest per month for five (5) years from August 25, 2000, or in the amount of ₱240,000.00,<sup>21</sup> which they consigned<sup>22</sup> to the RTC.

Cadastral Case Nos. 118 and 122 were later consolidated.<sup>23</sup>

In an Order<sup>24</sup> dated July 12, 2006, the RTC granted TCLC's petition in Cadastral Case No. 118, resulting in the issuance of the corresponding Writ of Possession<sup>25</sup> and Notice to Vacate<sup>26</sup> which were duly served upon Sps. Guevarra.<sup>27</sup> Accordingly, the latter filed a motion for reconsideration<sup>28</sup> and Motion to Hold in Abeyance the Implementation of the Writ of Possession.<sup>29</sup>

In an Order<sup>30</sup> dated October 20, 2008, the RTC denied the motion for reconsideration in Cadastral Case No. 118, but granted Sps. Guevarra's petition in Cadastral Case No. 122. In so doing, the RTC recognized Sps. Guevarra's right to repurchase the subject property, pointing out that they were able to file their petition within the five-year period provided under Section 119 of Commonwealth Act No. 141,<sup>31</sup> otherwise known as the Public Land Act (Public Land Act).<sup>32</sup> As a consequence, the RTC directed TCLC to reconvey the subject property to Sps. Guevarra and execute the corresponding deed of reconveyance upon payment of the purchase price of ₱150,000.00, plus one percent (1%) interest per month from the date of the auction sale on June 15, 2000 up to August 8, 2006, as well as the corresponding tax assessments and foreclosure expenses.<sup>33</sup>

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<sup>19</sup> Records (Cadastral Case No. 122), pp. 5-11.

<sup>20</sup> Id. at 6-7.

<sup>21</sup> Id. at 8-9.

<sup>22</sup> See Official Receipt No. 19205006; id. at 4.

<sup>23</sup> See Order dated March 8, 2006; records (Cadastral Case No. 118), p. 44. Penned by Judge Teodulo A. Colada.

<sup>24</sup> Id. at 54-55.

<sup>25</sup> Dated July 31, 2006 issued by Clerk of Court VI Atty. Marlo C. Brasales. Id. at 56-57.

<sup>26</sup> Dated August 1, 2006 signed by Sheriff IV Cresencio Gomez, Jr. Id. at 59.

<sup>27</sup> See signature of petitioner Marcelina Guevarra; id. at 57 and 59.

<sup>28</sup> Dated August 8, 2006. Id. at 68-79.

<sup>29</sup> Dated August 8, 2006. Id. at 80-84.

<sup>30</sup> Id. at 100-102.

<sup>31</sup> Entitled "AN ACT TO AMEND AND COMPILE THE LAWS RELATIVE TO LANDS OF THE PUBLIC DOMAIN" (December 1, 1936).

<sup>32</sup> Records (Cadastral Case No. 118), p. 101.

<sup>33</sup> Records (Cadastral Case No. 118), pp. 101-102.

Dissatisfied, TCLC filed a motion for reconsideration<sup>34</sup> which was, however, denied in an Order<sup>35</sup> dated January 6, 2009; thus, it filed an appeal<sup>36</sup> before the CA.

### **The CA Proceedings**

In a Decision<sup>37</sup> dated October 3, 2011, the CA affirmed the RTC's October 20, 2008 Order, upholding Sps. Guevarra's right to repurchase the subject property pursuant to Section 119 of the Public Land Act, with modification that the same be conditioned upon the payment of the purchase price fixed by TCLC. It ruled that after the expiration of the redemption period, the present owner, *i.e.*, TCLC, has the discretion to set a higher price.<sup>38</sup>

Aggrieved, Sps. Guevarra filed a motion for reconsideration<sup>39</sup> which was, however, denied in a Resolution<sup>40</sup> dated October 17, 2012, hence, this petition.

### **The Issue Before the Court**

The essential issue in this case is whether or not the CA committed a reversible error in ruling that the repurchase price for the subject property should be fixed by TCLC.

### **The Court's Ruling**

In an extra-judicial foreclosure of registered land acquired under a free patent, the mortgagor may redeem the property within two (2) years from the date of foreclosure if the land is mortgaged to a rural bank under Republic Act No. (RA) 720,<sup>41</sup> as amended, otherwise known as the Rural Banks Act, or within one (1) year from the registration of the certificate of sale if the land is mortgaged to parties *other than* rural banks pursuant to Act No. 3135.<sup>42</sup> If the mortgagor fails to exercise such right, he or his heirs may still repurchase the property within five (5) years from the expiration of the

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<sup>34</sup> Filed on December 2, 2008. Records (Cadastral Case No. 122), pp. 54-57.

<sup>35</sup> Id. at 61.

<sup>36</sup> See Notice of Appeal filed on January 30, 2009; id. at 63.

<sup>37</sup> *Rollo*, pp. 27-36.

<sup>38</sup> Id. at 34-35.

<sup>39</sup> Dated November 8, 2011. Id. at 40-46.

<sup>40</sup> Id. at 38-39.

<sup>41</sup> Entitled "AN ACT PROVIDING FOR THE CREATION, ORGANIZATION AND OPERATION OF RURAL BANKS, AND FOR OTHER PURPOSES" (June 6, 1952). (See Section 3 of Batas Pambansa Blg. 65, further amending Section 5 of RA 720).

<sup>42</sup> See Section 6 of Act No. 3135.

aforementioned redemption period<sup>43</sup> pursuant to Section 119 of the Public Land Act, which states:

SEC. 119. Every conveyance of land acquired under the free patent or homestead provisions, when proper, shall be subject to repurchase by the applicant, his widow, or legal heirs, within a period of five years from the date of the conveyance.

In this case, the subject property was mortgaged to and foreclosed by TCLC, which is a lending or credit institution, and not a rural bank; hence, the redemption period is one (1) year from the registration of the certificate of sale on August 25, 2000, or until August 25, 2001. Given that Sps. Guevarra failed to redeem the subject property within the aforesated redemption period, TCLC was entitled, as a matter of right, to consolidate its ownership and to possess the same.<sup>44</sup> Nonetheless, such right should not negate Sps. Guevarra's right to repurchase said property within five (5) years from the expiration of the redemption period on August 25, 2001, or until August 25, 2006, in view of Section 119 of the Public Land Act as above-cited.

In this relation, it is apt to clarify that contrary to TCLC's claim,<sup>45</sup> the tender of the repurchase price is not necessary for the preservation of the right of repurchase, because the filing of a judicial action for such purpose within the five-year period under Section 119 of the Public Land Act is already equivalent to a formal offer to redeem. On this premise, consignment of the redemption price is equally unnecessary.<sup>46</sup>

Thus, the RTC and CA both correctly ruled that Sps. Guevarra's right to repurchase the subject property had not yet expired when Cadastral Case No. 122 was filed on September 8, 2005. That being said, the Court now proceeds to determine the proper amount of the repurchase price.

Sps. Guevarra insist that the repurchase price should be the purchase price at the auction sale plus interest of one percent (1%) per month and other assessment fees,<sup>47</sup> citing the rulings in the cases of *Belisario v. Intermediate Appellate Court*<sup>48</sup> (*Belisario*) and *Salenillas v. CA*<sup>49</sup> (*Salenillas*). On the other hand, TCLC maintains that it is entitled to its total claims under the promissory note and the mortgage contract<sup>50</sup> in accordance

<sup>43</sup> See *Spouses Hilaga v. Rural Bank of Isulan*, 631 Phil. 526, 534 (2010), citing *Sta. Ignacia Rural Bank, Inc. v. CA*, G.R. No. 97872, March 1, 1994, 230 SCRA 513, 525.

<sup>44</sup> See *Development Bank of the Phils. v. CA*, 375 Phil. 114, 128 (1999).

<sup>45</sup> See Comment filed on September 18, 2013; *rollo*, pp. 122-123.

<sup>46</sup> *Vda. de Panaligan v. CA*, 328 Phil. 1232, 1238-1239 (1996).

<sup>47</sup> *Rollo*, p. 20.

<sup>48</sup> 247-A Phil. 184 (1988).

<sup>49</sup> 251 Phil. 764 (1989).

<sup>50</sup> *Rollo*, p. 122. Total repurchase price incorrectly computed as ₱3,216,660.63 by TCLC in its Appellant's Brief before the CA; see CA *rollo*, p. 31. Total repurchase should be ₱3,216,560.63, computed as follows:

with Section 47<sup>51</sup> of the General Banking Law of 2000.<sup>52</sup>

TCLC’s argument is **partly** correct.

To resolve the matter, it must first be pointed out that case law has equated a right of repurchase of foreclosed properties under Section 119 of the Public Land Act as a “right of redemption”<sup>53</sup> and the repurchase price as a “redemption price.”<sup>54</sup> Thus, in *Salenillas*, the Court applied then Section 30, now Section 28, Rule 39 of the Rules of Court (Rules) in the redemption of the foreclosed property covered by a free patent:

Now, as regards the redemption price, applying Sec. 30 of Rule 39 of the [Rules], the petitioners should reimburse the private respondent the amount of the **purchase price at the public auction plus interest at the rate of one per centum per month** up to November 17, 1983, together with the amounts of **assessments and taxes** on the property that the private respondent might have **paid after purchase and interest on the last named amount at the same rate as that on the purchase price.** (Emphases supplied)<sup>55</sup>

The Court has, however, ruled<sup>56</sup> that redemptions from lending or *credit institutions*, like TCLC, are governed by Section 78<sup>57</sup> of the General

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Principal Amount of ₱377,600 plus interest at **18% per 180 days** from July 16, 1997 and Penalty at **3% per month** from February 16, 1997

Capital Gains Tax

Documentary Stamp Tax

Judicial Commission

Publication Fee

Sheriff’s Fee

Total Claim

₱3,182,706.00

18,203.17

4,501.46

4,150.00

4,000.00

3,000.00

₱3,216,560.63

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Then Section 78 of RA 337 entitled “AN ACT REGULATING BANKS AND BANKING INSTITUTIONS AND FOR OTHER PURPOSES” (July 24, 1948), as amended by Presidential Decree No. (PD) 1828 entitled “AMENDING FURTHER REPUBLIC ACT NO. 337, AS AMENDED, OTHERWISE KNOWN AS THE ‘GENERAL BANKING ACT’” (January 16, 1981).

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RA 8791 entitled “AN ACT PROVIDING FOR THE REGULATION OF THE ORGANIZATION AND OPERATIONS OF BANKS, QUASI-BANKS, TRUST ENTITIES AND FOR OTHER PURPOSES” (May 23, 2000). Incorrectly referred to as the “New Banko Sentral ng Filipinas Act” in TCLC’s Comment; see *rollo*, p. 122.

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See *Heirs of Canque v. CA*, 341 Phil. 738, 748 (1997); *Belisario v. Intermediate Appellate Court*, *supra* note 48, at 194; *Spouses Hilaga v. Rural Bank of Isulan*, *supra* note 43, at 530-531.

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*Salenillas v. CA*, *supra* note 49, at 771.

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*Id.*

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See *Tolentino v. CA*, 546 Phil. 557, 567 (2007), *Sy v. CA*, 254 Phil. 120, 127-129 (1989), and *Ponce de Leon v. Rehabilitation Finance Corp.*, 146 Phil. 862, 878 (1970).

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Section 78 of RA 337, as amended by PD 1828, provides:

SEC. 78. Loans against real estate security shall not exceed seventy percent (70%) of the appraised value of the respective real estate security, plus seventy percent (70%) of the appraised value of the insured improvements, and such loans shall not be made unless title to the real estate shall be in the mortgagor. In the event of foreclosure, whether judicially or extra[-]judicially, of any mortgage on real [estate] which is security for any loan granted before the passage of this Act or under the provisions of this Act, the **mortgagor or debtor whose real property [had] been sold at public auction**, judicially or extra[-]judicially, for the full or partial payment of an obligation to any bank, banking or credit institution, within the purview of this Act shall have the right, within one year after the sale of the real estate as a result of the foreclosure of the respective

Banking Act (now Section 47 of the General Banking Law of 2000), which amended Section 6 of Act No. 3135 in relation to the proper redemption price when the mortgagee is a bank, or a banking or credit institution.<sup>58</sup>

Nonetheless, the Court cannot subscribe to TCLC's contention that it is entitled to its total claims under the promissory note and the mortgage contract<sup>59</sup> in view of the settled rule that ***an action to foreclose must be limited to the amount mentioned in the mortgage.***<sup>60</sup> Hence, amounts not stated therein must be **excluded**, like the **penalty charges of three percent (3%) per month** included in TCLC's claim.<sup>61</sup> A penalty charge is likened to a compensation for damages in case of breach of the obligation. Being penal in nature, it must be specific and fixed by the contracting parties.<sup>62</sup>

Moreover, the Court notes that the **stipulated three percent (3%) monthly interest** is excessive and unconscionable. In a plethora of cases, the Court has affirmed that **stipulated interest rates of three percent (3%) per month and higher are excessive, iniquitous, unconscionable, and exorbitant,**<sup>63</sup> hence, **illegal**<sup>64</sup> and **void for being contrary to morals.**<sup>65</sup> In *Agner v. BPI Family Savings Bank, Inc.*,<sup>66</sup> the Court had the occasion to rule:

Settled is the principle which this Court has affirmed in a number of cases that stipulated interest rates of **three percent (3%) per month** and higher are excessive, iniquitous, unconscionable, and exorbitant. While Central Bank Circular No. 905-82, which took effect on January 1, 1983, effectively removed the ceiling on interest rates for both secured and unsecured loans, regardless of maturity, nothing in the said circular could possibly be read as granting *carte blanche* authority to lenders to raise interest rates to levels which would either enslave their borrowers or lead to a hemorrhaging of their assets. **Since the stipulation on the interest rate is void for being contrary to morals, if not against the law, it is as if there was no express contract on said interest rate; thus, the interest**

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mortgage, to redeem the property by paying the amount fixed by the court in the order of execution, or **the amount due under the mortgage deed, as the case may be, with interest thereon at the rate specified in the mortgage, and all the costs, and judicial and other expenses incurred by the bank or institution concerned by reason of the execution and sale and as a result of the custody of said property less the income received from the property.** However, the purchaser at the auction sale concerned in a judicial foreclosure shall have the right to enter upon and take possession of such property immediately after the date of the confirmation of the auction sale by the court and administer the same in accordance with law.

x x x x (Emphases and underscoring supplied)

<sup>58</sup> *Tolentino v. CA*, supra note 56.

<sup>59</sup> *Rollo*, p. 122.

<sup>60</sup> *Spouses Viola v. Equitable PCI Bank, Inc.*, 592 Phil. 611, 619 (2008).

<sup>61</sup> See *CA rollo*, p. 31.

<sup>62</sup> *Spouses Viola v. Equitable PCI Bank, Inc.*, supra note 60, at 620.

<sup>63</sup> *Agner v. BPI Family Savings Bank, Inc.*, G.R. No. 182963, June 3, 2013, 697 SCRA 89, 102.

<sup>64</sup> *RGM Industries, Inc. v. United Pacific Capital Corporation*, G.R. No. 194781, June 27, 2012, 675 SCRA 400, 405.

<sup>65</sup> *Chua, v. Timan*, 584 Phil. 144, 148 (2008).

<sup>66</sup> Supra note 63; citations omitted.

**rate may be reduced as reason and equity demand.** (Emphases supplied)<sup>67</sup>

As such, the stipulated three percent (3%) monthly interest should be equitably reduced to one percent (1%) per month or twelve percent (12%) per annum reckoned from the execution of the real estate mortgage on December 12, 1996,<sup>68</sup> until the filing of the petition in Cadastral Case No. 122 on September 8, 2005.

In addition to the principal and interest, the repurchase price should also include all the expenses of foreclosure, *i.e.*, Judicial Commission, Publication Fee, and Sheriff's Fee, in accordance with Section 47<sup>69</sup> of the General Banking Law of 2000. Considering further that Sps. Guevarra failed to redeem the subject property within the one-year reglementary period, they are liable to reimburse TCLC for the corresponding Documentary Stamp Tax (DST) and Capital Gains Tax (CGT) it paid pursuant to Bureau of Internal Revenue (BIR) Revenue Regulations No. 4-99,<sup>70</sup> which requires the

<sup>67</sup> Id. at 102.

<sup>68</sup> Records (Cadastral Case No. 118), pp. 12-13.

<sup>69</sup> Section 47 of RA 8791 provides:

SEC. 47. *Foreclosure of Real Estate Mortgage.* - In the event of foreclosure, whether judicially or extra-judicially, of any [mortgage] on real estate which is security for any loan or other credit accommodation granted, the mortgagor or debtor whose real property [had] been sold for the full or partial payment of his obligation shall have the right within one year after the sale of the real estate, to redeem the property by paying the **amount due under the mortgage deed, with interest thereon at the rate specified in the mortgage, and all the costs and expenses incurred by the bank or institution from the sale and custody of said property less the income derived therefrom.** However, the purchaser at the auction sale concerned whether in a judicial or extra-judicial foreclosure shall have the right to enter upon and take possession of such property immediately after the date of the confirmation of the auction sale and administer the same in accordance with law. Any petition in court to enjoin or restrain the conduct of foreclosure proceedings instituted pursuant to this provision shall be given due course only upon the filing by the petitioner of a bond in an amount fixed by the court conditioned that he will pay all the damages which the bank may suffer by the enjoining or the restraint of the foreclosure proceeding.

Notwithstanding Act [No.] 3135, juridical persons whose property is being sold pursuant to an extra[-]judicial foreclosure, shall have the right to redeem the property in accordance with this provision until, but not after, the registration of the certificate of foreclosure sale with the applicable Register of Deeds which in no case shall be more than three (3) months after foreclosure, whichever is earlier. Owners of property that [had] been sold in a foreclosure sale prior to the effectivity of this Act shall retain their redemption rights until their expiration. (Emphasis and underscoring supplied)

<sup>70</sup> Entitled "FURTHER AMENDING REVENUE MEMORANDUM ORDER NO. 29-86 DATED SEPTEMBER 3, 1986, AS AMENDED BY REVENUE MEMORANDUM ORDER NO. 16-88 DATED APRIL 18, 1988, AS FURTHER AMENDED BY REVENUE MEMORANDUM ORDER NO. 27-89 DATED APRIL 18, 1989, AND AS LAST AMENDED BY REVENUE MEMORANDUM ORDER NO. 6-92 DATED JANUARY 15, 1992 RELATIVE TO THE PAYMENT OF CAPITAL GAINS TAX AND DOCUMENTARY STAMP TAX ON EXTRA-JUDICIAL FORECLOSURE SALE OF CAPITAL ASSETS INITIATED BY BANKS, FINANCE AND INSURANCE COMPANIES" (March 16, 1999), pertinent portions of which provide:

### SEC. 3. CAPITAL GAINS TAX. –

(1) In case the mortgagor exercises his right of redemption within one year from the issuance of the certificate of sale, no capital gains tax shall be imposed because no capital gains [have] been derived by the mortgagor and no sale or transfer of real property was realized. x x x.



payment of DST on extra-judicial foreclosure sales of capital assets initiated by banks, finance and insurance companies, as well as CGT in cases of non-redemption. CGT and DST are expenses incident to TCLC’s custody of the subject property, hence, likewise due, under the above provision of law.

Accordingly, the repurchase price is hereby computed as follows:

Principal		₱320,000.00
Add: Interest from 12/12/1996 to 09/05/2005		
from 12/12/1996 to 12/12/2004: (₱320,000.00 x 12% x 8 years)	₱307,200.00	
from 12/13/2004 to 09/08/2005: (₱320,000.00 x 12% x 270/365)	28,405.48	335,605.48
Total Amount due under the mortgage		₱655,605.48
Add: Capital Gains Tax		18,203.17
Documentary Stamp Tax		4,501.46
Judicial Commission		4,150.00
Publication Fee		4,000.00
Sheriff’s Fee		3,000.00
Repurchase Price		<u>₱689,460.11</u>

From this repurchase price shall be deducted the amount consigned to the RTC, or ₱240,000.00. Sps. Guevarra may repurchase the subject property within thirty (30) days from finality of this Decision upon payment of the net amount of ₱449,460.11.

**WHEREFORE**, the petition is **DENIED**. The Decision dated October 3, 2011 and the Resolution dated October 17, 2012 of the Court of Appeals in CA-G.R. CV No. 02895 are hereby **AFFIRMED** with **MODIFICATION** allowing petitioners-spouses Rodolfo and Marcelina Guevarra to repurchase the subject property from respondent The Commoner Lending Corporation, Inc. (TCLC) **within thirty (30) days from the finality of this Decision** for the price of ₱689,460.11, less the amount of ₱240,000.00 previously consigned to the court *a quo*, or the net amount


(2) In case of non-redemption, the capital gains tax on the foreclosure sale imposed under Secs. 24 (D) (1) and 27 (D) (5) of the Tax Code [entitled “AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES” (January 1, 1998)] shall become due based on the bid price of the highest bidder but only upon the expiration of the one-year period of redemption provided for under Sec. 6 of Act No. 3135, as amended by Act No. 4118 [entitled “AN ACT TO AMEND ACT NUMBERED THIRTY-ONE HUNDRED AND THIRTY-FIVE, ENTITLED ‘AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES’” (December 7, 1933)], and shall be paid within thirty (30) days from the expiration of the said one-year redemption period.

SEC. 4. DOCUMENTARY STAMP TAX. –


- (1) In case the mortgagor exercises his right of redemption, the transaction shall only be subject to the ₱15.00 documentary stamp tax imposed under Sec. 188 of the Tax Code of 1997 because no land or realty was sold or transferred for a consideration.
- (2) In case of non-redemption, the corresponding documentary stamp tax shall be levied, collected and paid by the person making, signing, issuing, accepting, or transferring the real property wherever the document is made, signed, issued, accepted or transferred where the property is situated in the Philippines. x x x. (Underscoring supplied)

₱449,460.11, for which the corresponding deed of absolute conveyance shall be executed by TCLC.

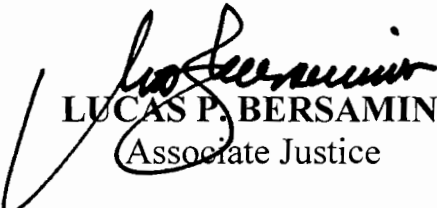
**SO ORDERED.**

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

**WE CONCUR:**

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice  
Chairperson

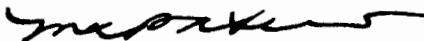
  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, 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