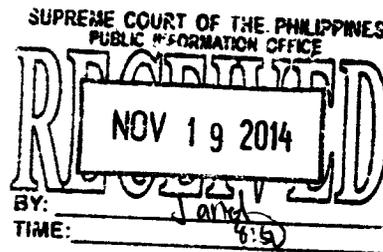




REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE



Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **22 October 2014** which reads as follows:*

GR. No. 211489 (REYNALDO C. TOLENTINO v. BPI FAMILY BANK). – On April 25, 2014, petitioner Reynaldo C. *Tolentino* filed a Rule 45 petition for review on *certiorari*¹ from the July 26, 2013 decision² and February 25, 2014 resolution³ of the Court of Appeals (CA) penned by Associate Justice Noel G. Tijam and concurred in by Associate Justices Romeo F. Barza and Ramon A. Cruz.

A. Factual Antecedents

Tolentino purchased the properties subject of this case (from Spouses Roberth and Myra Constancia Tolentino) *via* the Deed of Sale with Assumption of Mortgage (*Deed*) dated April 10, 2001; the properties were then mortgaged with respondent **BPI** Family Bank.

Pursuant to the Deed, Tolentino made installment payments to the BPI and requested that the payment receipts be issued in his name. The BPI, however, refused to recognize the sale and Tolentino as the properties' new owner on the ground that Tolentino did not secure the consent of BPI, as the properties' mortgagee, prior to the sale as provided under the terms of the Mortgage Contract.

Thus, Tolentino altogether stopped paying the balance of the loan (and interests) and, instead, informed the BPI of his decision to just participate in the foreclosure sale. The BPI, however, did not inform Tolentino of the extrajudicial foreclosure sale where the BPI eventually emerged as the winning bidder. The certificate of sale, issued in the BPI's name, was annotated on the properties' titles on **April 18, 2002**.

To redeem the properties within the one-year redemption period, Tolentino immediately wrote the BPI and asked for a computation of the redemption price. The BPI ignored Tolentino's letter.

To forestall the running of the redemption period, Tolentino filed on **April 14, 2003** before the Regional Trial Court (*RTC*), Branch 195 of Parañaque City, an **action for judicial redemption**. He specifically asked the RTC for the correct computation of the redemption price.

The RTC denied Tolentino's complaint. It ruled that Tolentino has no right to redeem the properties as the sale with assumption of mortgage was

¹ Under the Rules of Court; *rollo*, pp. 8-40.

² *Id.* at 43-53.

³ *Id.* at 54-56.

made without the BPI's consent. Hence, there is no need to compute the redemption price.

On Tolentino's appeal, the CA declared that he (Tolentino) has in fact the right to redeem the properties as the new owner. Citing the case of *Sps. Litonjua v. L & R Corporation*,⁴ the CA held that the stipulation in the Mortgage Contract that "any sale of the mortgaged properties without BPI's consent shall not bind BPI" is void as it violates Article 2130⁵ of the Civil Code. By virtue of the Deed, Tolentino was subrogated to the rights of the properties' previous owner including the right to redeem them.

The CA, nevertheless, denied Tolentino's appeal as it found him in delay in paying the redemption price. The CA noted that during the pendency of the case before the RTC, Tolentino did not tender the redemption price but instead asked for its re-computation.

B. The Urgent Motion for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction

On July 7, 2014, the Court issued a Resolution noting Tolentino's manifestation with compliance and requiring the BPI to comment on the petition within ten (10) days from notice. The BPI filed its comment on September 12, 2014.

On October 3, 2014, Tolentino filed this *Urgent Motion for the Issuance of Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction*.

Tolentino claimed that on September 2, 2013, the RTC issued a writ of possession in favor of the BPI; the BPI did not file any bond prior to the issuance of this writ. Pursuant to this writ of possession, the BPI served Tolentino a "notice to vacate" the properties. Thus, he seeks to enjoin the BPI from enforcing the "notice to vacate" and from exercising other acts detrimental to his exercise of his redemption right.

The Court's Ruling

The Complaint for Judicial Redemption that Tolentino filed before the RTC on April 14, 2003 had, under the peculiar facts of the case, effectively "frozen" the running of the redemption period which should have expired on April 18, 2003.

Jurisprudence provides that the **filing of a court action to enforce redemption**, being equivalent to a formal offer to redeem, **would have the effect of preserving the redemptioner's redemptive rights and "freezing" the expiration of the one-year period.**⁶

⁴ G.R. No. 130722, December 9, 1999, 320 SCRA 405.

⁵ A stipulation forbidding the owner from alienating the immovable mortgaged shall be void.

⁶ *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, G.R. No. 143896, July 8, 2005, 463 SCRA 64.

To have the effect of “freezing” the running of the redemption period, however, the action for judicial redemption should be: (1) filed on time; (2) made in good faith, not for the purpose of stretching the redemptive period indefinitely; (3) the rights of the parties are respected; and (4) the redemption price is either simultaneously consigned with the court or finally determined during the proceedings and paid within a reasonable time.⁷

Particularly relevant to this case is the fourth condition – payment of the redemption price. Note that Tolentino filed the action for judicial redemption on April 14, 2003 or well within the one-year redemption period that was to expire on April 18, 2003, *albeit*, without paying the redemption price. Tolentino’s non-payment or non-consignation of the redemption price led the CA to deny Tolentino’s right to exercise his right to redeem.

In *Hi-Yield Realty, Inc. v. Court of Appeals*⁸ whose ruling particularly applies to the peculiar factual situation in this case, the Court declared that the action for judicial redemption, even without the consignation of the redemption price, would have the effect of “freezing” the running of the redemption period as long as the redemptioner makes prompt payment in full once the redemption price is determined.

In short, even without the simultaneous tender or consignation of the redemption price, the judicial action for redemption will “freeze” the running of the redemption period as long as the redemptioner pays in full the redemption price as soon as it is finally determined.

In this case, Tolentino could not have consigned the redemption price, upon filing the action for judicial redemption, as the BPI had been refusing, despite his letter-requests, to inform him of it (the redemption price) or even provide him with an accounting and computation of the amount that he needs to pay to redeem the properties. He could not even have consigned the redemption price during the course of the proceedings as the RTC refused to recognize him as the proper party to file the redemption action, in effect forcing him to go up to the CA; by then, more than several years had elapsed before the CA declared that he has the right (as the proper party) to redeem.

Under these circumstances, Tolentino’s non-payment of the redemption price could not have barred his right to redeem the properties as his action for judicial redemption “froze” the running of the redemption period.

As the redemption period has not yet lapsed, the writ of possession in favor of the BPI may properly be issued only upon the filing of a bond per

⁷ *Hi-Yield Realty, Inc. v. Court of Appeals*, 437 Phil. 483, 493 (2002).
⁸ *Id.*

Section 7 of Act No. 3135.⁹ The RTC's issuance of the writ of possession in favor of the BPI in this case, absent the required bond, may be improper.

Based on these considerations, the grant of a TRO and/or writ of preliminary injunction is proper.

A [TRO]/writ of preliminary injunction may be issued only upon clear showing by the applicant of the existence of the following: (1) a right in *esse* or a clear and unmistakable right to be protected; (2) a violation of that right; and (3) an urgent and paramount necessity for the writ to prevent serious damage.¹⁰

These requisites are, under the facts, disputably present in this case justifying the grant of a TRO and/or writ of preliminary injunction. This recognition is, however, subject to the Court's final disposition of the case on its merits.

In sum, we find sufficient and compelling reasons to grant Tolentino's prayer for the issuance of a TRO and/or writ of preliminary injunction if only to preserve and maintain the parties' respective rights pending the Court's resolution of the petition.

ACCORDINGLY, the Court Resolves to:

1. **ISSUE** the **TEMPORARY RESTRAINING ORDER** effective immediately enjoining respondent BPI Family Bank from further acting and committing any acts pending resolution of the petition. The parties are hereby also ordered to **MAINTAIN** the *status quo* until further orders from this Court; and
2. **REQUIRE** petitioner Reynaldo C. Tolentino to file within ten (10) days a cash and/or surety bond equivalent to **₱4,131,566.77** issued by a reputable bonding company pursuant to the guidelines and subject to the requirements provided under A.M. No. 04-7-02-SC, August 16, 2004; otherwise, the temporary restraining order herein issued will automatically be lifted.

SO ORDERED.

Very truly yours,


MA. LOURDES C. PERFECTO
Division Clerk of Court

⁹ Sec 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.

¹⁰ *Tecnogas Philippines Manufacturing Corporation v. Philippine National Bank*, G.R. No. 161004, April 14, 2008, 551 SCRA 183.

Del Castillo, *J.*, on leave; Jardeleza, *J.*, designated as Acting Member per Special Order No. 1838 dated October 13, 2014.

Leonon, *J.*, on leave; Perlas-Bernabe, *J.*, designated as Acting Member per Special Order No. 1841 dated October 13, 2014.

- PAGE 5 -

ATTY. CONRADO C. MARQUEZ (x)
Counsel for Petitioner
9 San Francisco Street
SAV 10 1700 Parañaque City

BENEDICTO AND BURKLEY LAW OFFICES (x)
(ATTY. MICHAEL ANGELO S. LOPEZ)
Counsel for Respondent
14th Floor, BPI Building
Ayala Avenue corner Paseo de Roxas
1225 Makati City

COURT OF APPEALS (x)
Ma. Orosa Street
Ermita, 1000 Manila
CA G.R. CV No. 93095

OFFICE OF THE CHIEF ATTORNEY (x)
OFFICE OF THE REPORTER (x)
Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)
LIBRARY SERVICES (x)
Supreme Court, Manila
[for uploading pursuant to A.M. No. 12-7-1-SC]

Please notify the Court of any change in your address.
GR211489. 10/22/14 (195)SR ~~10/22/14~~



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

REYNALDO C. TOLENTINO,
Petitioner,

G.R. No. 211489

- versus -

TEMPORARY RESTRAINING ORDER

BPI FAMILY BANK,
Respondent.
x -----x

TO: THE COURT OF APPEALS (x)
Ma. Orosa Street
Ermita, 1000 Manila
(CA-G.R. CV No. 93095)

BENEDICTO AND BURKLEY LAW OFFICES (x)
(Atty. Michael Angelo S. Lopez)
Counsel for Respondent
14th Floor, BPI Building
Ayala Avenue corner Paseo de Roxas
1225 Makati City

GREETINGS :

WHEREAS, the Supreme Court on 22 October 2014 promulgated a resolution in the above-entitled case, the dispositive of which reads:

“G.R. No. 211489 (*Reynaldo C. Tolentino v. BPI Family Bank*).-

xxx

ACCORDINGLY, the Court Resolves to:

1. **ISSUE** the **TEMPORARY RESTRAINING ORDER** effective immediately enjoining respondent BPI Family Bank from further acting and committing any acts pending resolution of the petition. The parties are hereby also ordered to **MAINTAIN** the *status quo* until further orders from this Court; and

2. **REQUIRE** petitioner Reynaldo C. Tolentino to file within ten (10) days a cash and/or surety bond equivalent to **₱4,131,566.77** issued by a reputable bonding company pursuant to the guidelines and subject to the requirements provided under A.M. No. 04-7-02-SC, August 16, 2004; otherwise, the temporary restraining order herein issued will automatically be lifted. *Del Castillo, J., on leave; Jardeleza, J., designated as Acting Member per Special Order No. 1838 dated October 13, 2014. Leonen, J., on leave; Perlas-Bernabe, J., designated as Acting Member per Special Order No. 1841 dated October 13, 2014.*

SO ORDERED.”

NOW, THEREFORE, effective immediately and continuing until further orders from this Court, You, the respondent BPI Family Bank, the Court of Appeals, your agents, representatives, and all other persons acting on your behalf are hereby **RESTRAINED** from further acting and committing any acts pending resolution of the petition. The parties are hereby also ordered to **MAINTAIN** the *status quo* until further orders from this Court. Petitioner Reynaldo C. Tolentino is **REQUIRED** to **file/post** within ten (10) days a cash and/or surety bond equivalent to **₱4,131,566.77** issued by a reputable bonding company pursuant to the guidelines and subject to the requirements provided under A.M. No. 04-7-02-SC, August 16, 2004; otherwise, the temporary restraining order herein issued will automatically be lifted.

GIVEN by the **HONORABLE SENIOR ASSOCIATE JUSTICE ANTONIO T. CARPIO**, Chairperson of the Second Division of the Supreme Court of the Philippines, on 22 October 2014.

Very truly yours,


MA. LOURDES C. PERFECTO
Division Clerk of Court

Copy furnished:

ATTY. CONRADO C. MARQUEZ (x)
Counsel for Petitioner
9 San Francisco Street
SAV 10, 1700 Parañaque City