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**FOR PUBLICATION**

**IN THE SUPERIOR COURT  
FOR THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

<b>CITY TRUST BANK, INC.,</b>	)	<b>CIVIL ACTION NO. 02-0630</b>
	)	
<b>Plaintiff,</b>	)	
	)	<b>ORDER DENYING REDEMPTIONERS'</b>
<b>vs.</b>	)	<b>PETITION FOR EXERCISE OF</b>
	)	<b>REDEMPTION RIGHTS</b>
<b>RAMON TENORIO CHONG and</b>	)	
<b>JOAQUINA DLG. CHONG,</b>	)	
	)	
<b>Defendants.</b>	)	

THIS MATTER came before the Court on September 30, 2008 at 1:30 p.m. in Courtroom 220A for a hearing on Redemptioners Barbara Deleon Guerrero Sablan and Vicente Tenorio Chong's Petition for Exercise of Redemption Rights (hereinafter Redemptioners or Petitioners). Redemptioners Sablan and Chong appeared through counsel G. Anthony Long, Esq. Purchaser City Trust Bank ("Bank") appeared through counsel James S. Sirok, Esq.

**FACTUAL BACKGROUND**

Plaintiff City Trust Bank ("Bank") obtained a judgment against defendants Ramon T. and Joaquina Dlg. Chong in the total amount of \$391,555.14 on February 17, 2004, and amended on February 23, 2004. Bank executed and sold at a public auction several parcels of real property owned and mortgaged by the defendants. Specifically, Bank sold one parcel of real property at a sale held on or about June 22, 2007. A second sale was held on August 16, 2007, wherein three parcels of real property

1 were sold. The three parcels consisted of Lot H-360-1, Lot H-469-14, and Lot H-469-10. Another  
2 parcel of real property was sold on October 9, 2007. The petition herein concerns the redemption of the  
3 three lots sold on August 16, 2007.

4 Bank was the purchaser of each of the three lots. On July 31, 2008, Redemptioner Sablan  
5 acquired the redemption rights to Lot H-360-1 pursuant to an Assignment of Redemption Rights, and  
6 Redemptioner Chong acquired the redemption rights to the other two lots also pursuant to an  
7 Assignment of Redemption Rights. On August 14, 2008, Redemptioners Sablan and Chong filed their  
8 petition for exercise of redemption rights. Purchaser Bank opposed the petition and filed its motion to  
9 dismiss the petition. After the briefing by both parties, the Court heard the arguments of counsel on  
10 September 30, 200, and received from Petitioners a "Clarification of Assignments" document. The  
11 clarification was executed by debtors Joaquina and Ramon Chong and filed with the Commonwealth  
12 Recorder's Office on September 30, 2008 as File No. 08-1960. This document purports to declare,  
13 clarify and confirm that the prior Assignment of Redemption Rights to Petitioners herein were to include  
14 any and all of their claim, interest and right in the respective lots. The Court thereafter took the matter  
15 under advisement and set the matter for a status conference on November 18, 2008 at 1:30 p.m. At the  
16 November 18, 2008, hearing, the Court announced its decision from the bench denying the petition. The  
17 Court now enters its written decision as follows.

#### 18 ANALYSIS

##### 19 **1. Petitioners' compliance with the procedure for tendering the redemption amount.**

20 The first issue raised by Bank is the Petitioners' failure to comply with the procedural mandates  
21 of the Commonwealth Real Estate Mortgage Law governing redemption found at Section 4542, Title 2  
22 of the Commonwealth Code. Section 4542(b) provides:

23 **In the event of a disagreement between the purchaser and the judgment debtor as to**  
24 **whether any sum demanded by the purchaser is a proper charge to be added to the**  
**amount required for redemption, the judgment debtor shall pay to the clerk of the**

1           **court the amount demanded by the purchaser for redemption which the purchaser**  
2           **believes, in good faith, are the amounts allowed by this chapter, less the amount in**  
3           **dispute. The judgment debtor shall at the time file with the court a written petition**  
4           **setting forth specifically the item or items to which the judgment debtor objects,**  
5           **together with reasons for those objections, and asking that a proper amount be**  
6           **determined by the court.**

7           Bank argues that Petitioners' failure to actually offer or tender the amount they consider due and  
8           owing, and there having been no rejection by Bank, there is no dispute to constitute a disagreement  
9           between Bank as the purchaser, and Petitioners as the successors in interest to the judgment debtors  
10          Ramon and Joaquina Chong. This Court disagrees. The Petition adequately sets out facts to show a  
11          disagreement between Petitioners and Bank on two issues. First, the Petition discloses the parties'  
12          disagreement on whether a deficiency judgment that will likely be entered against the judgment debtors  
13          themselves will be a lien on the redeemed properties. Second, the Petition identifies the parties'  
14          disagreement on whether the Petitioners must also redeem the other real properties sold in the other two  
15          auction sale dates. Furthermore, Bank's argument that payment must first be made to it as the purchaser  
16          prior to filing a petition would negate the conditions required of the petitioner by Section 4542(b), which  
17          states:

18                   the judgment debtor shall pay to the clerk of the court **the amount demanded by**  
19                   **the purchaser for redemption which the purchaser believes, in good faith, are**  
20                   **the amounts allowed by this chapter, less the amount in dispute.** The  
21                   judgment debtor shall at the time file with the court a written petition setting forth  
22                   specifically the item or items to which the judgment debtor objects, together with  
23                   the reasons for those objections, and asking that a proper amount be determined  
24                   by the court.

25          The minimum amount that Bank can properly demand in this case is its purchase price plus the  
26          other sums expressly provided for in Section 4542(a). This is the amount Petitioners paid to the clerk.  
27          Petitioners have disputed any amount that would equal the deficiency judgment or the imposition of a  
28          lien by Bank as the plaintiff in this case. Those sums have not been paid to the clerk. Based on these

1 facts, this Court finds that the Petition is properly before the Court under Section 4542(b) of the Real  
2 Estate Mortgage Law.

3 **2. Petitioners' right to redeem the property sold as the defendants' successors in interest.**

4 The second issue raised by Bank is whether the petitioners have any right to the relief requested  
5 at all. The Bank contends that the assignments of redemption rights executed by the defendants in favor  
6 of Chong and Sablan granted them no interests in the real property sold on August 16, 2007, so that  
7 petitioners are not entitled to redeem the property as the defendants' "successors in interest" pursuant to  
8 Section 4541, title 2 of the Commonwealth Code.<sup>1</sup> The Bank further argues that petitioners are required  
9 to redeem *all* of the judgment debtors' property sold upon foreclosure and have failed to do so, tendering  
10 their redemption as to only those properties purchased at the August 16 sale. Petitioners on the other  
11 hand contend that the statutory right of redemption should be viewed as a reversionary interest which is  
12 as freely alienable as any future interest in real property, noting that each Certificate of Sale identified  
13 the interest purchased by Bank as "the mortgaged fee simple interest in and to" each property. (Def.'s  
14 Reply, at 3).

15 This Court has previously ruled in another matter that the statutory provision of 2 CMC § 4541  
16 allowing for the redemption of property after foreclosure and sale "by the judgment debtor or a  
17 successor in interest" encompasses the situation in which a judgment debtor has transferred his or her  
18 redemption rights to a third party by an assignment after the sale, thus permitting the assignee to redeem  
19 the judgment debtor's interest in the property. *Pacific Financial Corporation v. Sablan*, Civ. No. 02-  
20 0031 (N.M.I. Super. Ct. Jan. 4, 2008) (Order Granting Pet. For Exercise of Redemption Rights). The  
21 ruling is based upon the fact that the real estate mortgage law of the CNMI plainly establishes a right to

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22 <sup>1</sup> 2 CMC § 4541 provides: "All real property sold upon foreclosure of a mortgage by order, judgment, or decree of court may  
23 be redeemed pursuant to this article at any time, within 12 months after the date of the sale by the judgment debtor or a  
24 successor in interest; provided, however, that the judgment debtor or the successor in interest redeems all of the property as  
sold."

1 redemption after foreclosure on behalf of the judgment debtor or the judgment debtor’s successor in  
2 interest, and reflects the view of this Court that no provision within the statute nor any basis in equity  
3 may be found to prevent the judgment debtor from freely transferring any such interest that the judgment  
4 debtor may possess in the property. *See, Call v. Thunderbird Mortgage Co.*, 375 P.2d 169, 173-174  
5 (Cal. 1962) (judgment debtor’s assignee is “successor in interest” entitled to redeem under statute even  
6 when the assignment is executed after the sale).

7         The redemptioner in *Pacific Financial*, however, succeeded by quitclaim deed to the entirety of  
8 the judgment debtor’s interest in the property that was sold. The issue presented by petitioners Chong  
9 and Sablan in this matter is whether the statutory right of redemption is a distinct and severable right or  
10 interest which may be conveyed independently of any other interest in the property, so that an  
11 assignment of the bare “statutory right of redemption” itself suffices to qualify the assignee as the  
12 “successor in interest” to the judgment debtor within the meaning of 2 CMC § 4541. This Court  
13 concludes that the statutory right of redemption is attendant upon some other interest in the real property  
14 that is to be redeemed, the effect of redemption being to restore that interest. As such, the statutory right  
15 cannot exist absolutely in gross or be severed from that underlying interest. Whatever power, interest or  
16 obligation may be found to arise from an agreement purporting to convey the bare statutory right of  
17 redemption, by its nature it must lack sufficient privity *in rem* to the interest of the judgment debtor to  
18 certify the grantee as the judgment debtor’s successor in interest for the purpose of redeeming the  
19 debtor’s property under Section 4541.

20         The Commonwealth Real Estate Mortgage Law is based on a *lien* theory, rather than a *title*  
21 theory, of mortgage law. *Villanueva v. City Trust Bank*, 2002 MP 1, ¶15. Under the lien theory, ***title to***  
22 ***the mortgaged property remains in the mortgagor*** for the duration of the mortgage, and “the mortgagee  
23 holds only a lien as security.” *Id.* at ¶ 13 (emphasis added). When the mortgage is extinguished by a  
24 judicial decree of foreclosure and the property is executed upon and sold, a question arises as to the

1 proper characterization of the respective interests then held by the purchaser of the property and the  
2 judgment debtor who has a post-sale right of redemption. *See*, 12 THOMPSON ON REAL PROPERTY §  
3 101.07(c)(2) (David A. Thomas ed. 1994) (“THOMPSON”). As between the purchaser and the judgment  
4 debtor, one must hold a present possessory interest in the property, while the other appears to hold at  
5 best only an executory or future interest. *Id.*

6       Among lien theory jurisdictions with statutes providing for a right of redemption, two different  
7 theories have developed to account for the nature of the purchaser’s interest during the interval between  
8 the sale and the expiration of the statutory period for redemption. 4-37 RICHARD R. POWELL, POWELL ON  
9 REAL PROPERTY § 37.46 (Matthew Bender ed. 2008). One view treats the purchaser’s interest as  
10 entirely executory: the purchaser at a foreclosure sale acquires the right to receive the redemption  
11 amount or, on the contingency that the amount is not paid, a deed. *Id.*; *Klien v. Mangan*, 17 N.E.2d 958,  
12 959 (Ill. 1938). The opposite view treats the purchaser as acquiring a defeasible title to the property,  
13 with the redemptioner holding the reversionary interest. *See*, NEV. REV. STAT. § 21.190 (1911); *Kaye v.*  
14 *United Mortgage Co.*, 466 P.2d 848 (Nev. 1970).<sup>2</sup> Petitioners in this case advocate the latter view,  
15 contending that Defendants’ only interest in the properties at the time they executed their assignments,  
16 hence all that Defendants could convey, was their right to redemption reserved by statute.

17       Turning to the provisions of the Commonwealth Real Estate Mortgage Law, a “mortgage” is  
18 clearly defined as “a contract in which real property is made the security for the performance of an act,

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19  
20 <sup>2</sup> The issue may be expressed in common law terms as whether, according to the first view, the purchaser acquires from the  
21 sale a fee simple subject to a condition precedent (which is a future interest) or, according to the second, acquires a present  
22 fee simple subject to a condition subsequent. THOMPSON § 20.03. In the present context, the first theory is functionally the  
23 same regardless of whether the common law conception of an estate with a “condition precedent” is replaced by the notion of  
24 an “executory interest” in the property (e.g., the interest of a purchaser under a contract to convey). *Id.*

Some jurisdictions have adopted the alternative view that the purchaser buys a lien against the property at the foreclosure  
sale; either succeeding to the mortgagee’s lien interest or acquiring an entirely new lien. 59 C.J.S. § 759. The Court is not  
persuaded of the utility of this view, as all actual liens are terminated by the foreclosure and sale and the purchaser’s interest  
is not one that is enforceable by execution. *See, Lindsey v. Meyer*, 125 Cal.App.3d 536,543 (Cal.App. 1981) (*quoting, Duff v.*  
*Randall*, 48 P. 66, 67 (Cal. 1897)). Instead, title to the property simply vests in the purchaser at the end of the redemption  
period by operation of the statute. 2 CMC § 4542(e).

1 usually the payment of a debt without the necessity of a change of possession and without the transfer of  
2 title.” 2 CMC § 4513(e). The mortgagee obtains no right of possession by virtue of the mortgage, unless  
3 the mortgagor expressly grants such a right. 2 CMC § 4514. In the event of a default by the mortgagor  
4 and in accordance with the statutory notice requirements, the mortgagee may bring an action for  
5 recovery on the debt as well as an action for foreclosure to satisfy the mortgage. 2 CMC §§ 4533, 4537.  
6 If the mortgagee proves its entitlement in the foreclosure action, judgment will be entered “for the sum  
7 so found due” and the judgment debtor will be allowed three months within which to deposit the  
8 judgment amount with the court. 2 CMC § 4537(d). If the judgment amount is not paid by the end of  
9 this period, the court will order the property sold. 2 CMC §4537(e).

10       Regarding the procedure for the sale of the mortgaged property, subsection (f) of Section 4537,  
11 Title 2 provides in part:

12       Whenever any real property shall be sold under judgment of foreclosure pursuant to the  
13 provisions of this chapter, the person making the sale must give to the purchaser a  
14 certificate of sale and properly record a duplicate thereof. The certificate shall state the  
15 date of judgment under which the sale was made, the names of the parties, a particular  
16 description of the real property sold, the price bid for each distinct lot or parcel, and the  
17 period during which the property is subject to redemption. At the expiration of the time  
18 for the redemption of the property, if the property is not redeemed, the person making the  
19 sale ... must make to the purchaser, the purchaser’s heirs, or assignees, or to any person  
20 who has acquired the title of the purchaser by redemption or otherwise, a deed or deeds to  
21 the property. The deed shall vest in the grantee all the rights, title and interest of the  
22 mortgagor in and to the property sold, at the time the mortgage was executed, or  
23 subsequently acquired by the mortgagor.

24 2 CMC § 4537(f) (emphasis added).

      Pursuant to the foregoing provision, the purchaser is only entitled to a Certificate of Sale  
acknowledging the purchase until the expiration of the redemption period, after which the purchaser is  
entitled to a deed to the property if there has been no redemption. With respect to the procedure for the  
exercise of redemption, subsection (e) of Section 4542, Title 2 provides in part:

      When the amount required for redemption has been determined... that amount shall be  
forthwith paid to the purchaser upon the execution of a proper certificate of redemption.  
The certificate of redemption shall state the names of the purchaser and redemptioner, the

1 claim, instrument, or judgment under which the redemptioner derives the right to redeem,  
2 and the date and amount of the redemption and particularly describing the redeemed  
3 property.

2 CMC § 4542(e) (emphasis added).

4 Unlike the Commonwealth statutory provisions relating to the sale upon foreclosure of real  
5 property, the redemption provisions contain no reference to deeds or to any vesting of interests. §§ 4541-  
6 4544. Read together, these provisions are consistent with the notion that the mortgage debtor retains the  
7 original title to the property until the expiration of the statutory period of redemption. Both the  
8 Certificate of Sale issued to the purchaser and the executed Certificate of Redemption delivered to the  
9 redemptioner appear to have a notice and evidentiary function which is in the nature of a receipt. Unlike  
10 the deed delivered to the purchaser once the possibility of redemption has been foreclosed, the  
11 certificates are not operative instruments to transfer title or to alter the estate. In fact, none of the  
12 statutory provisions suggest that legal title is transferred at the time of the judicial sale.<sup>3</sup> The statute  
13 does not expressly provide for the right to possession after the sale, but such right presumably follows  
14 the legal title. THOMPSON § 101.07(C)(1) (“[T]he debtor is invariably allowed to continue to occupy the  
15 property during the redemption period.”). It may appear that the debtor holds legal title for the  
16 beneficial use of the purchaser because the statute grants the purchaser the right to receive rents and  
17 profits from the property prior to redemption. 2 CMC § 4543(a). Because any rents and profits received  
18 are credited against the redemption amount, however, the purchaser’s status is not equivalent to the  
19 present holder of a beneficial title. *Id.* Rather, from an examination of the entire Real Estate Mortgage  
20 Law, the Court is convinced that the Commonwealth’s statutory scheme is one in which the mortgagor’s

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21 <sup>3</sup> By comparison, Nevada’s current statute provides: “Upon a sale of real property, the purchaser shall be substituted to and  
22 acquire all the right, title, interest and claim of the judgment debtor thereto. When the estate is less than a leasehold of 2  
23 years' unexpired term, the sale shall be absolute. In all other cases the real property shall be subject to redemption as provided  
24 in this chapter...” NEV. REV. STAT. § 21.190. This language is identical to California’s former statute. CAL. CIV. PROC. CODE  
§ 700 (*repealed*, Stats. 1982 ch. 1364 § 1, *effective* July 1, 1983; CAL. CIV. PROC. CODE § 701.640). California and a number  
of states have eliminated the uncertainties surrounding statutory redemption by repealing their redemption statutes and  
providing for a longer period between judgment and sale in which debtor may save the property by satisfying the judgment.  
5-38 POWELL ON REAL PROPERTY § 38.09[3].



1 title is wholly preserved until the expiration of the redemption period and the delivery of a deed pursuant  
2 to 2 CMC § 4537(f).

3 Despite the analogies recommended by the parties, proceedings conducted pursuant to the  
4 Commonwealth statute governing the foreclosure and sale of mortgaged property generate no new  
5 estates in the property, the interest deeded to the purchaser at the end of the redemption period being the  
6 identical interest pledged by the mortgagor to secure the mortgage. 2 CMC § 4537(e), (f). The statute  
7 must be read literally, and its terms construed so as to effectuate its purpose. *Pellegrino v.*  
8 *Commonwealth*, 1999 MP 10, ¶ 21, 5 N.M.I. 247. Applying this principle, the Court construes the  
9 statutory rights granted respectively to the purchaser and to the judgment debtor following the sale of the  
10 mortgaged property as purely executory in relation to the property. *Klien v. Mangan*, at 959. The  
11 judgment debtor possessed of title cannot hold a possibility of reverter, but only the right to cancel the  
12 sale prior to the transfer of title by paying the purchaser the redemption amount. 2 CMC § 4542(a). The  
13 purchaser obtains no vested estate or any enforceable lien against the property, but only the right to  
14 either receive the redemption amount within twelve months, or a deed to the property if there is no  
15 redemption. 2 CMC § 4537(f).<sup>4</sup>

16 Regardless of whether the judgment debtor's estate is preserved during the redemption period,  
17 the foreclosure sale is a proceeding *in rem*, and the judgment debtor's statutory right to redeem must be  
18 construed as a right with respect to the property. RESTATEMENT (SECOND) OF JUDGMENTS § 30 (19). On  
19 the issue of whether a judgment debtor may assign the bare statutory right to redeem independently of  
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21 <sup>4</sup> It may be worth noting that federal bankruptcy courts, applying 11 U.S.C. § 541(a)(1), summarily regard *both* the  
22 purchaser's expectancy *and* the judgment debtor's statutory right of redemption as property interests to be included in a  
23 bankrupt's estate. 5-541 COLLIER ON BANKRUPTCY § 541(a)(1)[2] (15<sup>th</sup> ed. Rev. 2008). Despite the rule that the  
24 characterization of property interests is a matter of state law, it has been held that the characterization of assets for inclusion  
in a bankruptcy estate is controlled by the federal statute. *Commercial Fed. Mortgage Corp. v. Smith*, 85 F.3d 1555, 1558  
(11<sup>th</sup> Cir. 1996) ("Although section 6-5-250 of the Alabama Code characterizes the statutory right of redemption as a mere  
personal privilege and not property or a property right, it is still a right that becomes property of the bankruptcy estate under  
the broad definition provided in Bankruptcy Code section 541.").

1 any further interest in the underlying property, jurisdictions generally permitting redemption by the  
2 debtor's "successor in interest" have reached opposite conclusions. Iowa, for example, specifically  
3 provides that such transfers are valid. IOWA CODE § 628.25 ("The rights of a debtor in relation to  
4 redemption are transferable, and the assignee has the like power to redeem."). *See, also, Farmers Prod.*  
5 *Credit Ass'n v. McFarland*, 374 N.W.2d 654, 656 (Iowa 1985) (explaining rationale). New Jersey,  
6 where the right of a judgment debtor to redeem mortgaged property from a foreclosure sale originated  
7 by judicial decision, also permits unfettered assignment of the right. *Lobsenz v. Micucci Holdings, Inc.*,  
8 316 A.2d 59, 59-60 (N.J.Super. 1974). On the other hand, Washington courts do not give effect to a  
9 judgment debtor's assignment of the "naked" right of redemption, recognizing an assignment of the  
10 right to redemption only when the assignee has succeeded to the judgment debtor's entire interest in the  
11 property to be redeemed. *Fidelity Mut. Sav. Bank v. Mark*, 767 P.2d 1382, 1385 (Wash. 1989); *Capital*  
12 *Inv. Corp. v. King County*, 47 P.3d 161, 167 (Wash. App. 2002).

13 The Commonwealth statute is silent on this precise issue and the question has not been addressed  
14 by the Commonwealth Supreme Court. This Court interprets the Commonwealth's redemption statute  
15 essentially as a remedial extension of the common law right of redemption (the "equity of redemption"),  
16 applied to the sale of the foreclosed property rather than to the mortgage itself. *Pacific Financial*  
17 *Corporation v. Sablan*, Civ. No. 02-0031 (Order, Jan. 4, 2008, at 6) (*citing*, NORMAN J. SINGER,  
18 SUTHERLAND STATUTORY CONSTRUCTION § 69.04 at 162 (5th ed. 1992)). The common law equity of  
19 redemption could be exercised by anyone affected by the mortgage; i.e., any person in privity of title  
20 with the mortgagor who would lose their interest upon foreclosure. RESTATEMENT (THIRD) OF PROPERTY  
21 (MORTGAGES) § 3.1, cmt. a, (1997). Similarly, Section 4536(a) of Title 2 provides that a default of the  
22 mortgage may be cured upon a payment by "the mortgagor or his or her successor in interest *in the*  
23 *mortgaged property or any part thereof....*" 2 CMC § 4536(a) (emphasis added). The notion that a  
24 stranger to the title has no standing to redeem is a natural consequence of the fact that the proceedings

