



By Order of the Court, Judge Joseph N. Camacho

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FOR PUBLICATION

**IN THE SUPERIOR COURT
FOR THE**



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N/A

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

CHO, SEONG JEO,)	CIVIL ACTION NO. 13-0161
)	
Plaintiff,)	
)	
v.)	ORDER DENYING OWNER OF RIGHT
)	OF REDEMPTION’S MOTION FOR
PARK JAE HYUN, HAN SANG EOK,)	EQUITABLE TOLLING AS THERE HAD
KWON CHOON SEOB, MOON YOO)	BEEN NO ATTEMPT TO REDEEM AND
SUK, AN JONG HO, PHILIP S. BERG)	THERE IS NO EQUITABLE BASIS FOR
COMPANY, LTD., and DAE DONG)	TOLLING
CORPORATION,)	
)	
Defendants.)	

I. INTRODUCTION

This matter came before the Court on July 21, 2015 at 1:30 p.m. in Courtroom 220. Mark Hanson and Benjamin Petersburg appeared on the behalf of Sheng Yuan International, Inc. (“SYII”), the Intervenor in the present case. Samuel Mok entered an appearance for Lee Dong Shin. Richard Pierce, also counsel of record for Lee Dong Shin, argued on Lee Dong Shin’s behalf at the hearing. Joshua Berger appeared on the behalf of Plaintiff Seong Jeo Cho.

There were several motions before the Court:

1. Lee Dong Shin’s Motion and Notice of Motion for Tolling.
2. SYII’s Motion to Strike and Opposition to Motion for Tolling.
3. SYII’s Motion to Hear Motion to Strike and Motion for Tolling on Shortened Time.

This motion is moot as the motions were all heard upon their originally scheduled hearing date of July 21, 2015.

4. Seong Jeo Cho’s Plaintiff’s Request for Instruction as to Whether to Issue a Deed.

1 Based on a review of the filings, oral arguments, and applicable law, the Court makes the
2 following decisions.

3 II. BACKGROUND

4 These present motions arise out of a dispute related to Tract No. 246 (“the property”). The
5 division of the proceeds from the auction of the property had been in dispute by a number of parties
6 to this case; however, the Court approved a settlement agreement related to the auction proceeds on
7 June 19, 2015.

8 On February 23, 2015, Lee Dong Shin, through his attorney Richard Pierce, filed an Entry
9 of Appearance and Notice of Claim in the present case. Lee Dong Shin later filed his Memorandum
10 in Support of Request for Excess Funds on May 1, 2015. Lee Dong Shin claims to be a successor in
11 interest to the judgment debtor in this case. As a successor in interest, Lee Dong Shin would have a
12 right of redemption to the property.¹ As the property was sold at auction on June 24, 2014 to Larry
13 Sang, Lee Dong Shin’s right of redemption expired on June 24, 2015.

14 SYII states that they are the current holder of the leasehold interest the subject property, as
15 the successor in interest to Larry Sang, who purchased the property at a public auction on June 24,
16 2014. Mr. Sang assigned his interest in the property to SYII on March 14, 2015. On May 11, 2015,
17 SYII filed its Motion to Intervene, arguing that any determination of whether Lee Dong Shin is
18 actually a successor in interest to the judgment debtor would impact their right to the property. SYII
19 filed its Proposed Complaint in Intervention as an exhibit to its Motion to Intervene on June 9,
20 2015. The Court granted the Motion to Intervene on June 12, 2015.

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

1 On June 15, 2015, Mr. Pierce, attorney for Lee Dong Shin, filed a Proposed Order for
2 Approval of Settlement. The Court approved this settlement agreement, which involved dividing
3 auction proceeds amongst the parties, on June 19, 2015.² The settlement agreement did not include
4 the SYII, as “[t]he Intervenor has not been included in the Agreement because the Intervenor
5 disclaimed any interest in proceeds from the auction.” Submission of Settlement Agreement and
6 Proposed Order to the Court at 2.

7 The settlement agreement, which was not signed by SYII, included a “Carve Out” of certain
8 claims, which would not be released.³

- 9 a) Mr. Lee’s or his successor’s or assign’s leasehold interest or lien with respect to Tract
10 No. H. 246.
- 11 b) Mr. Lee’s claim or his successor’s or assign’s claim for redemption pursuant to 2 CMC
12 § 4541 et seq. of Tract No. H 246.
- 13 c) Any claim by Mr. Lee or his successors or assigns against Sheng Yuan International,
14 Inc., and/or Larry Sang.

15 Settlement Agreement, Release, and Proposed Order at 4-5.

16 On June 24, 2015, Lee Dong Shin filed an Answer to SYII’s Complaint in Intervention, as
17 well as a Motion and Notice of Motion for Tolling.⁴ On June 25, 2015, Seong Jeo Cho filed
18 Plaintiff’s Request for Instructions as to Whether to Issue a Deed, requesting instructions on
19 whether to wait to issue the deed after the Court has ruled on Lee Dong Shin’s motion, and who
20 should sign the deed.

21 ² All parties, including the Intervenor, appeared on June 19, 2015 in Courtroom 220 and agreed to the terms of the
22 settlement agreement. As a result of this agreement, Lee Dong Shin received approximately \$261,088.92 of the auction
23 surplus. Proposed Order for Approval of Settlement at 2.

24 ³ At the July 21, 2015 hearing, the Court inquired from Mr. Pierce, counsel for Lee Dong Shin and drafter of the
settlement agreement, about the nature of the carve out. The carve out only covered the redemption right, pursuant to 2
CMC § 4541 et seq. This right of redemption ended on June 24, 2015, less than a week after the settlement agreement
was approved by the Court on June 19, 2015. This carve out did not extend the redemption period beyond 2 CMC §
4541 et seq. If Lee Dong Shin had wanted more time to redeem beyond the expiration date, the settlement agreement
carve out would have been the appropriate venue. Instead, Lee Dong Shin specifically carved out the redemption
period, which ended on June 24, 2015. Lee Dong Shin, through counsel, drafted and signed the settlement agreement
and even appeared in court and stated on the record that he approved of the settlement agreement.

⁴ June 24, 2015 is also the date of the expiration of Lee Dong Shin’s right of redemption.

1 SYII filed its Motion to Strike and Opposition to Motion for Tolling on June 26, 2015. SYII
2 also filed a Motion to Shorten Time for Hearing Motion to Strike and Lee Dong Shin's Motion for
3 Tolling, asking that the hearings be heard sooner than the hearing date of June 21, 2015. Lee Dong
4 Shin filed his Opposition to Hear Motion to Strike and Motion for Tolling on Shortened Time and
5 Opposition to Motion to Strike and Reply on Motion to Toll on June 28, 2015. SYII filed its reply
6 to Lee Dong Shin's oppositions on July 1, 2015.

7 These motions came before the Court on July 21, 2015. In essence, Lee Dong Shin is asking
8 that the court equitably toll its redemption period for the property. SYII, on the other hand, is asking
9 that the Court deny this motion as there is no longer an active case, as the Court approved a
10 settlement on June 19, 2015.

11 12 III. DISCUSSION

13 As there are currently three motions pending before the Court, the Court will address each
14 of these motions separately. The fourth motion, SYII's Motion to Hear Motion to Strike and Motion
15 for Tolling on Shortened Time, is moot as the motions were all heard upon their originally
16 scheduled hearing date of July 21, 2015. The remaining motions before the Court are SYII's
17 Motion to Strike and Opposition to Motion for Tolling,⁵ Lee Dong Shin's Notice of Motion and
18 Motion for Tolling, and Seong Jeo Cho's Plaintiff's Request for Instruction as to Whether to Issue a
19 Deed. The Court will also address the status of SYII's Complaint in Intervention going forward, the
20 status of which depends upon whether Lee Dong Shin's redemption period is equitably tolled.

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24 ⁵ Both SYII's opposition to Lee Dong Shin's motion to tolling and SYII's motion to strike were filed in the same document; however, the Court will consider these separately, as one is an opposition, while the other is its own motion.

1 **1. SYII’s Motion to Strike**

2 As a threshold matter, the Court must address SYII’s motion to strike, before addressing Lee
3 Dong Shin’s motion for tolling. In its motion to strike, SYII argues that Lee Dong Shin’s motion for
4 tolling should be stricken, as the present case had been resolved through a settlement agreement, as
5 Lee Dong Shin’s has no standing as he had not yet attempted to redeem, and as the issue of
6 redemption is moot because the redemption period has ended. The Court will address the issues of
7 whether Lee Dong Shin had attempted to redeem, as well as the fact that the redemption period had
8 ended, in discussing whether or not to equitably toll Lee Dong Shin’s redemption period.

9 With regard to whether there is still a case before the Court, the Court must look both to
10 whether the settlement or SYII’s complaint in intervention had any impact on whether there is still a
11 case presently before the Court. Although there was a settlement agreement reached between the
12 parties on June 19, 2015, SYII was not a party to this settlement agreement. In fact, since the
13 settlement involved auction proceeds, SYII was not included as “the Intervenor disclaimed any
14 interest in proceeds from the auction.” Submission of Settlement Agreement and Proposed Order to
15 the Court at 2. This settlement agreement dealt with auction proceeds, rather than Lee Dong Shin’s
16 right of redemption, and SYII did not sign this settlement agreement.

17 This settlement agreement also specifically included a carve out provision related to Lee
18 Dong Shin’s right of redemption in the property, as well as “[a]ny claim by Mr. Lee or his
19 successors or assigns against Sheng Yuan International, Inc., and/or Larry Sang.” Settlement
20 Agreement, Release, and Proposed Order at 4-5. Any claims related to Lee Dong Shin’s right of
21 redemption, and any of Lee Dong Shin’s claims against SYII, were specifically carved out of this
22 settlement agreement.

23 In addition, the Court must look to any impact that SYII’s complaint in intervention had on
24 the proceedings. Lee Dong Shin argues that, as SYII’s complaint in intervention was properly

1 served pursuant to Rule 5 of the Commonwealth Rules of Civil Procedure, there are still matters
2 pending before the Court.

3 When a party intervenes pursuant to Rule 24 of the Commonwealth Rules of Civil
4 Procedure, they must “serve a motion to intervene upon the parties as provided in Rule 5. This
5 motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the
6 claim or defense for which intervention is sought.” NMI R. Civ. P. 24(c). SYII filed their motion to
7 intervene on May 11, 2015, and later filed their complaint in intervention as an exhibit on June 10,
8 2015. Both items were filed via File & ServeXpress, the e-filing service used by the
9 Commonwealth Superior Court.

10 Documents served through File & ServeXpress to “other registered users shall be considered
11 as valid an effective service and shall have the same legal effect as an original paper document.”
12 Com. E-Filing R. 6.6 (a). Thus, if a filing is properly filed and served through File & ServeXpress,
13 it shall be considered served for purposes of NMI R. Civ. P. 5. In addition, under the Federal Rules
14 of Civil Procedure, if a complaint in intervention is served in compliance with Fed. R. Civ. P. 5(b)
15 by delivering a copy to a party’s attorney of record, the complaint is properly served. *Philadelphia*
16 *v. Morton Salt Co.*, 248 F. Supp. 506, 509 (E.D. Pa. 1965).⁶

17 Thus, as SYII was not a party to the settlement agreement and as SYII intervened in the
18 present case, there are still matters pending before the Court. Accordingly, SYII’s motion to strike
19 is denied.

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23 ⁶ As the Commonwealth Rules of Civil Procedure “are patterned after the federal rules, [the Court] will principally look
24 to federal interpretation for guidance.” *Commonwealth Dev. Auth. v. Camacho*, 2010 MP 19 ¶ 16 (citing *Ishimatsu v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 60).

1 **2. Lee Dong Shin’s Motion for Tolling**

2 Lee Dong Shin argues that his right of redemption in the property should be equitably tolled.
3 “All real property sold upon foreclosure of a mortgage by order, judgment, or decree of court may
4 be redeemed pursuant to this article at any time, within 12 months after the date of the sale by the
5 judgment debtor or a successor in interest.” 2 CMC § 4541. Larry Sang purchased the property at
6 an auction on June 24, 2014. Thus, Lee Dong Shin’s right of redemption expired on June 24, 2015,
7 which is one year after the date of the sale to Larry Sang.

8 The key issue, then, is whether Lee Dong Shin’s redemption period may be equitably tolled.
9 “Even where redemption is governed by statute, the time for redemption may be equitably tolled
10 under certain circumstances.” *Pacific Financial Corporation v. Sablan*, 2011 MP 19 ¶ 21. Although
11 the Commonwealth Supreme Court has not outlined a specific test related to equitable tolling,
12 “courts have considered prejudice to the opposing party, the existence of bad faith, fraud, or
13 mistake, and other circumstances as equity requires.” *Id.* at ¶¶ 21-22. Lee Dong Shin argues that
14 SYII’s “notice of its intent to fight redemption equates to a denial of the right to redeem,” and that
15 as a result, Lee Dong Shin’s redemption period should be equitably tolled. Motion for Tolling at 4.

16 In *Sablan*, the purported successor in interest attempted to exercise his right of redemption.
17 *Sablan*, 2011 MP 19 ¶ 5. The purported successor in interest then petitioned the Commonwealth
18 Superior Court for approval and tendered payment to the Clerk of Court. *Id.* Although *Sablan*
19 articulated standards related to equitable tolling, the Court did not reach the issue of whether the
20 purported successor in interest could have his redemption period equitably tolled, and instead
21 remanded to the trial court for a factual determination on whether the redemption period should be
22 tolled. *Id.* at ¶ 22.

23 One situation requiring equitable tolling is one where a party attempts to redeem, but is
24 rejected. *Buell v. White*, 908 P.2d 1175, 1177-1178 (Colo. App. 1995). In *Buell*, the redemptioner

1 attempted to redeem on the final day of the redemption period, but was unable to, as the bank would
2 not accept electronic transfers after 2:00 p.m. *Id.* at 1177. As the redemptioner “complied with the
3 applicable law in all respects and, through no fault of her own, was unable to redeem within the
4 applicable time,” the redemption period was tolled. *Id.* at 1178.

5 The facts of the present case are vastly different from those in *Sablan*, as well as in *Buell*. In
6 *Sablan*, as discussed above, the redemptioner actually attempted to redeem and attempted to tender
7 payment. *Sablan*, 2011 MP 19 ¶ 5. Likewise, in *Buell*, the redemptioner attempted to make
8 payment, and this payment was rejected. *Buell*, 908 P.2d at 1177. Here, there was no attempt at
9 payment, and thus no rejection of payment. Lee Dong Shin made no attempt to redeem. Instead, he
10 waited until the very last possible day for redemption to file a motion for tolling.

11 Lee Dong Shin argues that “when the right to redeem is being contested, the period for
12 redemption should be extended.” Opposition to Mot. To Strike at 4. Lee Dong Shin further argues
13 that SYII’s intervention served no purpose other than to “thwart redemption,” and as such there is
14 sufficient evidence to “raise a conclusion of bad purpose” on SYII’s behalf. Opposition to Mot. To
15 Strike at 5. Equitable tolling is only available if there has been a showing of “wrongful conduct by
16 the person relief is sought against.” *Sablan*, 2011 MP 19 ¶ 21 (citing *Dalton v. Franken Constr.*
17 *Cos.*, 914 P.2d 1036, 1040 (N.M. Ct. App. 1996)). Although SYII has filed a complaint in
18 intervention in the present case, this is insufficient to show an improper motive. Lee Dong Shin
19 directs the Court to *Grace v. Yarnall* for the proposition that SYII acted with an improper motive in
20 intervening. 346 F.Supp. 2d 222, 224 (D. Me. 2004). In *Yarnall*, the plaintiff was found to have
21 committed abuse of process by, in essence, using a court case to “create an obstacle on the record to
22 completion of the Defendant’s sale.” *Id.* at 224-225. Although Lee Dong Shin states in his affidavit
23 that he had obtained a purchaser who had been discouraged from buying as a result of the pending
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1 court case,⁷ there is simply not enough on the record for the Court to impute an improper motive to
2 SYII. In addition, the present issue is whether Lee Dong Shin’s redemption period should be tolled,
3 not whether Lee Dong Shin has found any potential purchasers.

4 The parties, excluding SYII, settled on June 19, 2015. Lee Dong Shin’s redemption period
5 ended on June 24, 2015. Between June 19, 2015 and June 24, 2015, Lee Dong Shin made no
6 attempt at making even a partial payment towards the redemption.⁸ Instead, Lee Dong Shin waited
7 until June 24, 2015—the final day of Lee Dong Shin’s redemption period—to file his Motion and
8 Notice of Motion for Tolling. Lee Dong Shin is attempting to toll the redemption period without
9 tendering any money.

10 In *Dalton*, one of the cases cited by the Commonwealth Supreme Court in *Sablan*, the court
11 denied equitable relief because the party seeking to redeem “waited too long to take the necessary
12 action.” *Dalton*, 914 P.2d at 1040. In *Dalton*, the party seeking redemption had begun “the process
13 of redemption late in the game” and “[h]is margin for error with regard to procedural matters and
14 processing delays was slim to none.” *Id.* It is worth emphasizing that the party seeking redemption
15 in *Dalton* had actually begun the process of redemption, although his payment was untimely. *Id.* at
16 1038, 1040. Here, Lee Dong Shin had not even begun the redemption process, nor had he attempted
17 to make any payments.

18 Lee Dong Shin literally waited until the very last possible day to ask that the redemption
19 period be tolled. Lee Dong Shin made no attempt to redeem before June 24, 2015. By waiting until
20 the very last possible day of the redemption period to request that the redemption period be tolled,
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23 ⁷ Lee Dong Shin’s affidavit is self-serving. There is no affidavit from any potential purchaser stating that, but for the
court case, he or she would have tendered the redemption price in full.

24 ⁸ As a result of the settlement agreement, Lee Dong Shin received approximately \$261,088.92 of the auction surplus.
Proposed Order for Approval of Settlement at 2. In theory, this money could have been used as a partial effort towards
redemption.

1 without actually making any attempt to redeem, Lee Dong Shin is essentially doing too little too
2 late.

3 As there are no equitable grounds to toll the redemption period, Lee Dong Shin's motion for
4 tolling is denied.

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6 **3. Plaintiff's Request for Instruction as to Whether to Issue a Deed**

7 Plaintiff Seong Jeo Cho is instructed to issue the deed for the subject property and have the
8 auctioneer sign off on the deed, as Lee Dong Shin's redemption period has expired and has not been
9 equitably tolled by the Court.

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11 **4. Status of SYII's Complaint in Intervention Going Forward**

12 As a final note, the Court finds it necessary to address the status of SYII's complaint in
13 intervention going forward. SYII's complaint in intervention was concerned with the validity of Lee
14 Dong Shin's rights to the property, all of which boil down to Lee Dong Shin's right of redemption.
15 Complaint in Intervention at 5. As Lee Dong Shin's right to redemption expired on June 24, 2015,
16 and as the Court has declined to equitably toll the redemption period, Lee Dong Shin no longer has
17 an interest in the property.

18 "The duty of the Court is to 'decide actual controversies by a judgment which can be carried
19 into effect, and not to give opinions on moot questions or abstract propositions, or to declare
20 principles or rules of law which cannot affect the matter at issue in the case at bar.'" *Bank of Saipan*
21 *v. Superior Court*, 2004 MP 15 ¶ 8 (quoting *In re Seman*, 3 N.M.I. 57, 64 (1992)). The issue of
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1 mootness may be raised “at any time, or even by [the] Court *sua sponte*.” *Gay & Lesbian Students*
2 *Asso. v. Gohn*, 850 F.2d 361, 365 n9 (8th Cir 1988).⁹

3 As Lee Dong Shin’s right of redemption was not equitably tolled, any claims related to Lee
4 Dong Shin’s right of redemption are now moot.

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6 **III. CONCLUSION**

7 Accordingly, SYII’s Motion to Strike is **DENIED**.

8 Lee Dong Shin’s Motion for Tolling is **DENIED**.

9 Seong Jeo Cho is instructed to issue the deed with the auctioneer’s signature.

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11 **IT IS SO ORDERED** this 24th day of August, 2015.

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14 /s/
15 JOSEPH N. CAMACHO
16 Associate Judge
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23 ⁹ There is a public interest exception to mootness where an issue is “capable of repetition yet evading review.” *Bank of*
24 *Saipan*, 2004 MP 15 ¶ 8. This exception comes into play when “there is something inherent in the situation presented
such that mootness will prevent consideration of the issues nearly every time those issues arise. *Id.* This is not the case
here – although Lee Dong Shin’s redemption period has expired, this is not something that would inherently happen
every time there is a case alleging a fraudulent conveyance.