

RIZALINA P. GAN, PETITIONER, VS. ASIATRUST DEVELOPMENT BANK, ASIA TRUST DEVELOPMENT BANK – TRUST BANKING GROUP, RESPONDENTS.

Ponente: ANTONIO-VALENZUELA, J.

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ANTONIO-VALENZUELA, J.:

This is the Petition for Review[1] filed by Rizalina P. Gan (“petitioner Gan”), assailing the Decision dated 12 September 2011 (“assailed Decision”)[2] issued by the Regional Trial Court, Branch 196, Parañaque City (“RTC”), in Civil Case No. 11-0280, entitled “Rizalina Gan, Joey Flordeliza, Zenaida Villasenor, their Heirs, Assigns, Successors-in-Interest and all persons claiming rights under them v. Asiatrust Development Bank, Asiatrust Development Bank Trust Banking Group.”

THE FACTS

Severina Realty Corporation (“SRC”), as the developer of the subdivision located at Milbrae Estate, Marcelo Village, Parañaque City, entered into contracts to sell houses and lots, with different buyers.

Subsequently, SRC entered into various Purchase Agreements with Asiatrust Development Bank (“respondent Asiatrust”), wherein respondent Asiatrust purchased the receivables of SRC, arising from the contracts to sell, and SRC assigned all its rights over the contracts to sell to respondent Asiatrust.

The buyers in the contracts to sell failed to pay their installments. In view of the buyers' default, and SRC's failure to buy back the purchased receivables from respondent Asiatrust, respondent Asiatrust rescinded the contracts to sell of the buyers, via the separate Notices of Cancellation of Contract to Sell.[3]

Thereafter, respondent Asiatrust transferred its rights over the properties subject of the contracts to sell, to Asiatrust Development Bank – Trust Banking Group (“respondent ATB-TBG”). On 10 September 2007, SRC entered into Deeds of Absolute Sale[4] with respondent ATB-TBG. Thereafter, certificates of title in the name of respondent ATB-TBG were issued.

Respondents Asiatrust and ATB-TBG discovered that despite the transfer of ownership of the properties to respondent ATB-TBG, Rizalina Gan (“petitioner Gan”), Joey Flordeliza (“Flordeliza”), and Zenaida Villasenor (“Villasenor”), continued to unlawfully possess the properties. Thus, respondent ATB-TBG sent Notices to Vacate dated 27 January 2010[5] to petitioner Gan, Flordeliza, and Villasenor, for them to vacate the properties. Petitioner Gan, Flordeliza, and Villasenor failed to vacate the properties.

On 23 May 2010, respondents Asiatrust and ATB-TBG filed the Complaint for Unlawful Detainer with Damages[6] against petitioner Gan, Flordeliza, and Villasenor, before the Metropolitan Trial Court, Parañaque City (“MeTC”).

The Complaint alleged: respondent ATB-TBG was the owner of the properties, evidenced by TCT Numbers 177000 (“subject property”), 177004, and 177002, and petitioner Gan, Flordeliza, and Villasenor unlawfully occupied the properties; respondent Asiatrust sent the Notices to Vacate dated 27 January 2010 to petitioner Gan,

Flordeliza, and Villasenor; despite notice, petitioner Gan, Flordeliza, and Villasenor failed to vacate, denying respondents Asiatruster and ATB-TBG their rights of ownership over the properties; due to petitioner Gan's, Flordeliza's, and Villasenor's refusal to vacate, respondents Asiatruster and ATB-TBG were constrained to secure the services of counsel.

The Complaint prayed that petitioner Gan, Flordeliza, and Villasenor: 1) vacate the properties; 2) pay attorney's fees (Php 100,000.00), plus an appearance fee of Php 5,000.00 for every hearing.

Petitioner Gan filed the Answer,[7] and alleged: petitioner Gan had been in possession of the subject property since 1997; petitioner Gan was not in default in the payment because petitioner Gan fully paid the Contract Price of Php 2,500,000.00 (i.e.: Php 600,000.00 paid on 30 July 1999 covered by O.R. No. 95371; Php 400,000.00 paid on 3 October 2001 covered by O.R. No. 91035;[8] Php 700,000.00 paid on 8 May 2007 covered by O.R. No. 16616;[9] Php 900,000.00 paid on 31 May 2007 covered by O.R. No. 166618)[10]; petitioner Gan was surprised to receive the Notice to Vacate from respondent Asiatruster, and petitioner Gan wrote to respondent Asiatruster explaining that she was the owner of the subject property; respondent ATB-TBG replied through the letter dated 1 April 2008,[11] which also served as the Final Demand letter, and stated that respondent ATB-TBG did not honor the payments made by petitioner Gan; petitioner Gan filed the Complaint[12] for specific performance and damages against SRC and a certain Joy Bote, before the Housing Land Use Regulatory Board ("HLURB"); the Complaint for unlawful detainer by respondents Asiatruster and ATB-TBG stated no cause of action, and the MeTC had no jurisdiction over the case; respondents Asiatruster and ATB-TBG knew, as early as 2007, that petitioner Gan occupied the subject property, however respondents Asiatruster and ATB-TBG made the demand to vacate only on 1 April 2008, and the filing of the Complaint was beyond the one year prescriptive period provided by law; respondents Asiatruster and ATB-TBG failed to allege prior physical possession and the circumstances showing unlawful deprivation; by reason of the filing of the Complaint, petitioner Gan suffered sleepless nights, and was constrained to secure the services of a counsel.

By way of counterclaim, petitioner Gan prayed for the payment of: (1) moral damages of P100,000.00; (2) exemplary damages; and (3) attorney's fees of P50,000.00.

The MeTC conducted preliminary conference, and required the parties to file their respective position papers.

Respondents Asiatruster and ATB-TBG filed the Plaintiffs' Position Paper,[13] and alleged: respondent Asiatruster acquired the rights of SRC over the contracts to sell via the Purchase Agreements between SRC and respondent Asiatruster; the contracts to sell between SRC and the buyers were rescinded because the buyers defaulted in the payment of installments; after the rescission of the contracts to sell, respondent Asiatruster (as transferee of the rights of the SRC over the contracts to sell) transferred the ownership of the subject property to respondent ATB-TBG; petitioner Gan's occupancy was merely possession by tolerance, and petitioner Gan's possession had become unlawful when she refused to comply with respondent ATB-TBG's demand to vacate; there was no need for respondents Asiatruster and ATB-TBG to allege prior physical possession because such fact was not required in unlawful detainer.

Petitioner Gan's Position Paper[14] alleged: SRC entered into two contracts to sell over the same subject property – contract to sell between SRC and a certain Joy Bote on 15 May 2001, and contract to sell between SRC and petitioner Gan on 13 November 2001; the contract to sell between SRC and petitioner Gan superseded the contract to sell between SRC and Bote; petitioner Gan had the right of possession over the subject property because petitioner Gan fully paid the contract price on 31 May 2007, or four months prior to SRC's sale/transfer of rights to respondent Asiatruster; petitioner Gan had already paid the full purchase price when respondents Asiatruster and SRC entered into the purchase agreements, thus petitioner Gan's rights could not have been affected

by the purchase agreements between SRC and respondent Asiatruster.

On 3 June 2011, the MeTC rendered the Decision.[15] The dispositive portion of the Decision provided:

“Wherefore, premises considered, judgment is hereby rendered against the defendants Rizalina Gan and Joey Flordeliza and all persons claiming rights under them as follows:

1) For Rizalina Gan and all persons claiming rights under her, for them to vacate the subject premises located at Lot 16, Block 4, Unit C1-B, Milbrae Estate, Marcelo Village, Parañaque City and covered by TCT No. 74424 of the Registered of Deeds of Parañaque City.

2) For Joey Flordeliza and all persons claiming rights under him, for the to vacate the subject premises located at Lot 11, Block 4, Unit C1-G, Milbrae Estate, Marcelo Village, Parañaque City and covered by TCT No. 161761 of the Registered of Deeds of Parañaque City.

3) Ten Thousand Pesos (P 10,000.00) as and for Attorney's fees.

4) Costs of suit.

SO ORDERED.”

The Decision of the MeTC ruled: the MeTC had jurisdiction over the Complaint for unlawful detainer; the allegations in the Complaint contained all the elements for unlawful detainer; a contract to sell does not convey ownership until full payment of the purchase price; petitioner Gan failed to adduce evidence of full payment, thus the ownership of the subject property did not vest to petitioner Gan; the allegation of prior physical possession was not required in actions for unlawful detainer.

Only petitioner Gan appealed to the RTC.

On 12 September 2011, the RTC issued the assailed Decision,[16] affirming in toto the Decision of the MeTC.

The Decision of the RTC ruled: petitioner Gan's evidence did not prove full payment of the contract price; absent evidence of the full payment of the contract price, the ownership of the subject property did not vest to petitioner Gan, and petitioner Gan had no right to possess the subject property.

Petitioner Gan moved for the reconsideration of the assailed Decision. The RTC denied the motion.[17]

Thus, petitioner Gan filed this Petition for Review raising the following assignment of issues:[18]

A. WHETHER OR NOT THE INSTANT CASE IS BARRED BY PRESCRIPTION.

B. WHETHER OR NOT MS. GAN IS ENTITLED TO THE POSSESSION OF THE PROPERTY CONSIDERING THAT:

1) THE CONTRACT TO SELL BETWEEN SRC AND MS. GAN IS STILL SUBSISTING;

2) AT THE TIME OF THE ALLEGED SALE OF THE SUBJECT PROPERTY TO THE ATB-TBG, THE PURCHASE PRICE IN THE CONTRACT TO SELL BETWEEN SRC AND MS. GAN, HAS ALREADY BEEN FULLY PAID.

3) WITH THE FULL PAYMENT OF THE PURCHASE PRICE, ATB IS NECESSARILY BOUND BY THE PAYMENT SINCE THE SAME WAS MADE EVEN BEFORE THE TRANSFER OF THE SUBJECT PROPERTY.

4) ATB CANNOT HAVE BETTER RIGHTS THAN SRC MAY HAVE AGAINST MS. GAN. SRC SOLD NOTHING TO ATB UNDER THE PRINCIPLE OF “NEMO DAT QUOD NON HABET.”

C. WHETHER OR NOT MS. GAN IS ENTITLED TO MORAL, EXEMPLARY DAMAGES AND ATTORNEY'S FEES.

The issues are: (1) whether the Complaint was barred by prescription; and (2) whether petitioner Gan had the right of possession over the subject property.

ARGUMENTS OF PETITIONER GAN

Anent the first issue, petitioner Gan answers in the affirmative. The Complaint for unlawful detainer had prescribed.

The Petition for Review thrusts: petitioner Gan had been in possession of the subject property since 1997; respondent Asiatrust, as transferee of SRC's rights by virtue of the purchase agreements, had constructive knowledge of petitioner Gan's possession; the Complaint was barred because it was filed beyond the one year prescriptive period.

Regarding the second issue, petitioner Gan answers in the affirmative. Petitioner Gan had the right of possession over the subject property.

The Petition for Review thrusts: SRC entered into two contracts to sell over the same subject property, one with Bote dated 15 May 2001, and the other with petitioner Gan dated 13 November 2001; between the two contracts to sell, the contract to sell of SRC with petitioner Gan was the valid and subsisting contract to sell, because the contract to sell of petitioner Gan cancelled and superseded the contract to sell of Bote; at the time of the execution of the purchase agreements, petitioner Gan had paid in full the contract price, thus with the full payment of the contract price, SRC did not have anymore rights to transfer to respondent Asiatrust; it was incumbent upon respondent Asiatrust, as a banking institution, to conduct prior investigation and to determine for itself whether there were prior possessors in its acquired properties; petitioner Gan had been in possession of the subject property prior to the execution of the contract to sell on November 2001, and respondents Asiatrust and ATB-TBG cannot feign ignorance on petitioner Gan's possession; the Resolution of the HLURB in HLURB Case No. REM-102908-13971 affirmed petitioner Gan's right of possession over the subject property.

ARGUMENTS OF RESPONDENTS ASIATRUST AND ATB-TBG

Anent the first issue, respondents Asiatrust and ATB-TBG answer in the negative. The Complaint for unlawful detainer had not prescribed.

The Comment[19] parries: the one year period within which to file a case for unlawful detainer should be reckoned from 27 January 2010, the date when respondents Asiatrust and ATB-TBG made the demand to vacate; when petitioner Gan refused to vacate despite notice, petitioner Gan's withholding of the property became unlawful, thus the filing of the unlawful detainer on 23 March 2010, or within one year from the date of demand, was within the prescriptive period.

Regarding the second issue, respondents Asiatrust and ATB-TBG answer in the negative. Petitioner Gan had no right of possession over the subject property.

The Comment parries: respondents ATB-TBG were the owners of the subject property, evidenced by the Deed of Absolute Sale between SRC and respondent ATB-TBG, and the Transfer Certificate of Title No. 177000; respondent ATB-TBG was a purchaser in good faith and for value; being the owner of the property, respondents Asiatrust and ATB-TBG had the right to possess the subject property which petitioner Gan unlawfully possessed.

Respondents filed the Motion for Substitution of Respondents Asiatrust Development Bank to Asia United Bank Corporation,[20] which prayed for the substitution of respondents Asiatrust and ATB-TBG, to Asia United Bank

Corporation (“respondent AUB”).

Petitioner Gan filed the Memorandum (Of the Petitioner).[21] Respondent AUB filed the Memorandum.[22]

THE COURT'S RULING

We dismiss the Petition for Review.

Anent the first issue, we rule in the negative. The Complaint for unlawful detainer had not prescribed.

Applicable is Rule 70, Section 1 of the Rules of Court which provides:

Section 1. Who may institute proceedings, and when. — Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs. (1a)

As above-quoted, a complaint for unlawful detainer should be filed within one year after such unlawful deprivation. Jurisprudence recognizes that the one-year prescriptive period to file action for unlawful detainer may be reckoned from the last demand to vacate the property.[23]

In this case, respondent AUB's action for unlawful detainer had not prescribed because it was filed within one year from the date of last demand. Notably, petitioner Gan admitted in her Memorandum, that she received respondent AUB's Notice to Vacate dated 27 January 2010, in the latter part of February 2010. Respondent AUB filed the Complaint on 23 March 2010, or almost two months after petitioner Gan's receipt of the Notice to Vacate. Thus, the Complaint was filed within the one-year period and had not prescribed.

Regarding the second issue, we rule in the negative. Petitioner Gan had no right of possession over the subject property.

In *Spouses Dela Cruz v. Spouses Capco*,[24] the Supreme Court explained that the only issue in an ejectment case is the physical possession of real property — possession de facto and not possession de jure.[25] However, the issue of ownership may be passed upon to determine the issue of possession, and the adjudication of the issue of ownership is only provisional.

In this case, both petitioner Gan and respondent AUB asserted ownership over the subject property. Notably, the MeTC and the RTC, in passing upon the ownership of the subject property to determine the issue of possession, found that petitioner Gan failed to substantiate her claim of ownership because there was no evidence of full payment of the contract price. Further, the HLURB in the Decision dated 21 June 2011,[26] affirmed that petitioner Gan had not yet fully paid the contract price because evidence showed that petitioner Gan had an unpaid balance of Php 921,864.65.

In a contract to sell, ownership is retained by the vendor, and is not to pass to the vendee until full payment of the purchase price.[27] Thus, absent clear evidence of full payment, the ownership of the subject property did not vest upon petitioner Gan.

Respondent AUB had proved its ownership of the subject property by a preponderance of evidence. Respondent

AUB's claim of ownership over the subject property was supported by the Deed of Absolute Sale[28] and TCT No. 177000.[29]

A certificate of title shall not be subject to collateral attack.[30] Notably, any question regarding the validity of respondent AUB's title can only be assailed in a direct action expressly instituted for that purpose. Considering that respondent AUB had a certificate of title over the subject property, respondent AUB's title cannot be collaterally attacked, especially in a mere action for unlawful detainer.[31] Thus, as the owner, respondent AUB had the right to the possession of the subject property.

We DISMISS the Petition for Review.

IT IS SO ORDERED.

Lampas Peralta, F., Chairperson and Cruz, S.C., JJ., concur.

[1] C.A. Rollo, p. 3.

[2] Annex A of the Petition, C.A. Rollo, p. 18.

[3] See Notice of Cancellation of Contract to Sell, attached as Annexes F, F-1 and F-2 of the Complaint, C.A. Rollo, p. 200. 4See Deeds of Absolute Sale between SRC and ATB-TBG, attached as Annexes B, B-1, B-2 of the Complaint, C.A. Rollo, p. 150.

[5] See Notices to Vacate, attached as Annexes G, G-1, G-2 of the Complaint, C.A. Rollo, p. 206.

[6] C.A. Rollo, p. 137.

[7] C.A. Rollo, p. 212.

[8] C.A. Rollo, p. 225.

[9] C.A. Rollo, p. 226.

[10] C.A. Rollo, p. 227.

[11] C.A. Rollo, p. 229.

[12] C.A. Rollo, p. 230.

[13] C.A. Rollo, p. 56.

[14] C.A. Rollo, p. 111.

[15] C.A. Rollo, p. 49.

[16] Supra, note 2.

[17] Annex B of the Petition, C.A. Rollo, p. 36.

[18] C.A. Rollo, p. 7.

[19] C.A. Rollo, p. 270.

[20] C.A. Rollo, p. 331.

[21] C.A. Rollo, p. 343.

[22] C.A. Rollo, p. 375.

[23] See Suarez v. Mr. and Mrs. Emboy, Jr., et al., G.R. No. 187944, 12 March 2014; Delos Reyes v. Spouses Odonos, et al., G.R. No. 178096, 23 March 2011; Ten Forty Realty and Development Corp., v. Cruz, G.R. No. 151212, 10 September 2003.

[24] G.R. No. 176055, 17 March 2014.

[25] Ibid., citing Beltran v. Nieves, G.R. No. 175561, October 20, 2010, 634 SCRA 242, 248.

[26] C.A. Rollo, p. 260.

[27] Spouses Roque v. Aguado et al., G.R. No. 193787, 7 April 2014.

[28] C.A. Rollo, p. 153.

[29] C.A. Rollo, p. 147.

[30] Beltran et al., v. Nieves, G.R. No. 175561, 20 October 2010 citing Section 48, P.D. No. 1529.

[31] Spouses Dela Cruz v. Spouses Capco, supra note 24, citing Go v. LooYuko, G.R. No. 196529, July 1, 2013.

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