

PIA TAN KWAN, PLAINTIFF-APPELLANT, VS. SPS. ESTEBAN M. SING AND BERLINA D. SING, THE FORMER BEING NOW DECEASED, IS HEREBY SUBSTITUTED BY THE HEIRS OF HIS ESTATE, NAMELY: BERLINA...

Ponente: LAGURA-YAP, J.

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LAGURA-YAP, J.:

This appeal seeks to nullify the Decision[1] dated November 16, 2000, rendered by the Regional Trial Court (RTC), Branch 16, Cebu City in Civil Case No. CEB-18461, the dispositive portion whereof is hereunder quoted:

“WHEREFORE, premises considered, judgment is hereby rendered:

1. Ordering the defendants Berlina Sing and Heirs of Esteban Sing to pay to plaintiff the sum of P150,000 representing the principal obligation with legal interest until fully paid; the sum of P20,000 as attorney's fees; the sum of P10,000 as litigation expenses and to pay the costs.
2. Declaring the intervenors-defendants Spouses Marcelo Ocariza and Adelaida Ocariza as the lawful owner of the parcel of land and house under TCT No. T-61697 levied/attached in connection with the case. Consequently, the order of attachment of said property is hereby LIFTED and SET ASIDE.
3. Directing the Register of Deeds of Cebu to dissolve or cancel the annotation of levy/attached or adverse claim on the title of the property in question.

SO ORDERED.”

Factual Antecedents

This case stemmed from a Complaint[2] dated February 27, 1996, filed by plaintiff-appellant, Pia Tan Kwan (Kwan) before the RTC against defendants-appellees, Spouses Esteban & Berlinda Sing (Sps. Sing) for Collection of Sum of Money and Damages with Application for Preliminary Attachment docketed as Civil Case No. CEB-18461.

In her complaint, Kwan alleged that on May 31, 1990, Sps. Sing offered to borrow money from her in the amount of P100,000.00. She granted the loan because of the couple's representation that they were solvent. Sps. Sing executed a Promissory Note[3] dated May 31, 1990, in the amount of P100,000.00 payable on or before November 30, 1990 with penalty in the rate of 5% per month in case of default from maturity until it is paid.[4]

Despite repeated demands, Sps. Sing only made late small payments to cover the previous accrued penalties but no payment whatsoever was made on the principal loan amount. The Sps. Sing refused to continuously pay despite Kwan's demands. As of February 21, 1996, the unpaid loan amount was P100,000.00 excluding past due penalties, litigation expenses and attorney's fees.[5] At the inception of the contract, Sps. Sing were already guilty of deliberate fraud in contracting the debt and it became more manifest from their late payments of some of the accrued penalties. Sps. Sing never paid a single centavo on the principal obligation notwithstanding their

representation that they were solvent and had the ability to pay.[6]

On June 5, 1995, Sps. Sing again obtained a second loan from Kwan, likewise representing that they were solvent and had the ability to pay. They executed a promissory note[7] in the amount of P50,000.00 with the same terms as the first promissory note. Again, notwithstanding demands by Kwan, the obligation also remains unpaid.[8]

Kwan thus filed the instant complaint praying[9] inter alia for the issuance of a Writ of Preliminary Attachment and that Spouses Sing will be ordered to pay solidarily the amount of P150,000.00 plus penalty.

On April 11, 1996, Kwan filed an Ex Parte Motion to Grant Application for Preliminary Attachment[10] which was granted by the court a quo in its Order[11] rendered on even date.

On June 18, 1996, Kwan filed an Ex Parte Motion to Declare the Defendants in Default[12] in view of Sps. Sing's failure to file their Answer within the reglementary period provided by law.

On June 26, 1996, the RTC rendered an Order[13] declaring Sps. Sing in default. It also allowed Kwan to present her evidence ex parte.

On September 10, 1996, intervenors-appellees, Sps. Marcelo and Adelaida Ocariza (Sps. Ocariza) filed a Complaint (Intervention)[14]. They alleged that in order to help their brother, Esteban Sing (Esteban), now deceased, they purchased a land situated at Sangi, Calajo-an Minglanilla, Cebu. They subdivided it into three lots; one portion for them, another for their sister Josephine Tia and the last lot, which is the subject of the attachment, was given to Esteban. Although Lot No. 4479-2, was registered in the name of Esteban, in reality it was owned by Sps. Ocariza.[15]

Likewise, they averred that defendant Berlina Sing (Berlina), has never performed her obligation as the legal wife of Esteban. When Esteban was already bedridden, Berlina never attended to her ailing husband and she never spent a single centavo for the latter's medication. It was Sps. Ocariza who spent for all the medical and even funeral expenses incurred by Esteban.[16]

Sometime in February 1996, Berlina and her 3 children sold the house and lot subject of the attachment to Sps. Ocariza through an Extrajudicial Settlement with Deed of Sale[17]. The consideration of the sale is the amount spent by Sps. Ocariza in the hospitalization and funeral expenses of Esteban. Right after the execution of the sale, Sps. Ocariza took possession of the subject house and lot which is now their duly constituted family home.[18]

Further Sps. Ocariza alleged that Berlina maliciously and fraudulently connived with Kwan to make it appear that Esteban had an obligation with the latter. However, it was only Berlina who forged the signature of her husband in the promissory notes attached in the complaint. Their malicious act were made clear when Kwan and Berlina made arrangements that the summons will be made to Kwan's Office. To consummate their plan, Berlina did not answer the complaint and she was eventually declared in default. Moreover, Berlina executed a Special Power of Attorney authorizing Kwan to withdraw Esteban's title of the property in the office of the Social Security System, Cebu. Lastly, Sps. Ocariza pointed out that it is surprising that Kwan would grant another loan to Berlina on April 1996 considering that she had already filed a case for collection of sum of money on February 27, 1996.[19]

On September 12, 1996, Kwan filed Plaintiff's Answer to Intervenor's Complaint[20] specifically denying the allegations in the Intervenor's complaint. Subsequently, plaintiff filed an Amended Complaint[21] wherein the surviving defendant Spouse Berlina remains as party defendant in her personal capacity and the heirs of Esteban as substituted defendants. They likewise included Sps. Ocariza as co-defendants. Hence, Sps. Ocariza became not only the intervenors in the case but also co-party defendants. Thereafter Sps. Ocariza submitted their Answer to Amended Complaint with Counterclaim and Crossclaim[22] on March 17, 1997.[23]

Again, the Sings failed to file their Answer to the Amended Complaint. Thus, the RTC declared them in default for the second time in an Order[24] dated May 7, 1997.

Pre-trial conference was conducted but the parties failed to come up with an amicable settlement.[25]

Thereafter trial on the merits ensued.

On November 16, 2000, the court a quo rendered the assailed Decision[26].

Hence, this appeal.

Assignment of Errors

The appellants interpose the following errors:

“I.

THE TRIAL COURT ERRED IN FINDING FOR INTERVENOR-APPELLEE (sic) SPOUSES OCARIZA AND IN LIFTING AND SETTING ASIDE THE ATTACHMENT ON THE SUBJECT PROPERTY[.]

II.

THE TRIAL COURT ERRED IN NOT FINDING DEFENDANT-APPELLEE AND INTERVENOR-APPELLEE TO BE LIABLY SOLIDARILY LIABLE FOR MORAL AND EXEMPLARY DAMAGES[.]”

The Ruling of this Court

In the instant case, appellant Kwan questioned only the portion of the RTC's decision which favored Sps. Ocariza. She claimed that the trial court erred in lifting and setting aside the attachment on the contested property. Her appeal is essentially anchored on the following arguments, to wit:

1. The extra-judicial settlement of estate with deed of absolute sale over the subject parcel of land is absolutely void since two children-heirs of Esteban were still minors at the time they executed the document.
2. The alleged sale of the subject property to Sps. Ocariza was tainted with fraud and was done to defraud creditor appellant.
3. Kwan's attachment over the subject property is superior to Sps. Ocariza's unregistered sale covering the same property.
4. Kwan is entitled for an award of moral and exemplary damages in view of Sps. Ocariza's bad faith and wanton acts of fraud.

The appeal is bereft of merit.

Generally, the findings of fact of the lower courts are entitled to great weight and not disturbed except for cogent reasons. Indeed, they should not be changed on appeal in the absence of a clear showing that the trial court overlooked, disregarded, or misinterpreted some facts of weight and significance, which if considered would have altered the result of the case.[27] In this case, Kwan failed to convince Us to depart from the findings of the court a quo.

Transaction entered into by a party who is incapable of consent is voidable

Kwan assertion that the extra-judicial settlement of estate with deed of absolute sale is considered void since at the time it was executed, the two children of Esteban were still minors and incapable of giving consent is bereft of

merit.

Contrary to Kwan's allegation, Article 1390 of the Civil Code provides that a contract where one of the parties is incapable of giving consent is considered voidable or annulable and not void ab initio. Hence, the contract is considered valid and binding until it is annulled, thus:

“Art. 1390. The following contracts are voidable or annulable, even though there may have been no damage to the contracting parties:

- (1) Those where one of the parties is incapable of giving consent to a contract;
- (2) Those where the consent is vitiated by mistake, violence, intimidation, undue influence or fraud.

These contracts are binding, unless they are annulled by a proper action in court. They are susceptible of ratification.”

Fraud cannot be presumed, and the failure of petitioner to prove it defeats its own cause

Kwan's asseveration that the extra-judicial settlement of estate with deed of absolute sale was entered into to defraud creditors is not supported with competent evidence and merely based on speculation and conjecture.

Contracts in fraud of creditors are those executed with the intention to prejudice the rights of creditors. They should not be confused with those entered into without such mal-intent, even if, as a direct consequence, a creditor may suffer some damage. More so it is, when the allegation involves not only fraud on the part of the debtor, but also that of another creditor. In determining whether or not a certain conveying contract is fraudulent, what comes to mind first is the question of whether the conveyance was a bona fide transaction or a trick and contrivance to defeat creditors.[28]

In this case, the mere fact that Esteban and Sps. Ocariza are close relatives and the alleged questionable entries appearing in the Extrajudicial Settlement does not in any way directly establish any fraudulent intent or machination intentionally concocted by the parties to defraud Kwan. The Court can surmise several reasons why there are inconsistencies in the dates appearing in the deed of sale. Although fraud is one possible reason among several others, this Court would be engaging much on speculation and conjecture to declare such conclusion. Thus, in the absence of any clear and direct proof that would show that the Heirs of Esteban and Spouses Ocariza fraudulently connived to defraud the creditors of the decedent, We are inclined to affirm the finding of the trial court that Sps. Ocariza are purchasers in good faith.

Good faith consists in an honest intention to abstain from taking any unconscientious advantage of another.[29] While it may be stated that good faith is presumed, conversely, bad faith must be established by competent proof by the party alleging the same.[30] Sans such proof, Sps. Ocariza are deemed to be purchasers in good faith, and their interest in the subject property must not be disturbed.

Moreover, the Court noted that Kwan's allegations regarding the suspicious entries appearing in deed of sale was never brought to the attention of the trial court. Noticeably, Kwan in her complaint never even prayed for the rescission of the said document.

Adverse claim was annotated ahead of the attachment

Kwan asseverated that the trial court committed reversible error in setting aside the writ of attachment since the attachment is superior to Sps. Ocariza's unregistered sale over the subject property. To buttress her claim, she cited the case of Rural Bank of Sta. Barbara [Pangasinan], Inc. v. The Manila Mission of the Church of Jesus Christ of Latter Day Saints[31] (Rural Bank of Sta. Barbara case) in which the Supreme Court ruled that a duly

registered levy on attachment takes preference over a prior unregistered deed of sale.

We are not persuaded.

In this case, it is clear from TCT No. 61697[32] that Sps. Ocariza's adverse claim was annotated ahead of Kwan's attachment. Significantly, the adverse claim was annotated on March 14, 1996, while the attachment was annotated on May 7, 1996.

In the Rural Bank of Sta. Barbara Case which was cited by Kwan, the Supreme Court citing Ruiz, Sr. v. Court of Appeals[33] further made a qualification of the general rule that a duly annotated attachment is superior to an unregistered prior sale. The Supreme Court declared that knowledge of an unregistered sale is equivalent to registration. A party's knowledge of a prior unregistered interest has the effect of registration as to him, thus:

“Knowledge of previous yet unregistered sale

In Ruiz, the very case cited by petitioner, we made a qualification of the general rule that a duly annotated attachment is superior to an unregistered prior sale. In fact, we resolved Ruiz in favor of the vendee in the unregistered prior sale, because knowledge of the unregistered sale by the attaching creditor is deemed equivalent to registration. We explained in Ruiz:

But where a party has knowledge of a prior existing interest which is unregistered at that time he acquired a right to the same land, his knowledge of that prior unregistered interest has the effect of registration as to him. Knowledge of an unregistered sale is equivalent to registration. As held in Fernandez v. Court of Appeals [189 SCRA 780 (1990)].

Section 50 of Act No. 496 (now Sec. 51 of P.D. 1529), provides that the registration of the deed is the operative act to bind or affect the land insofar as third persons are concerned. But where the party has knowledge of a prior existing interest which is unregistered at the time he acquired a right to the same land, his knowledge of that prior unregistered interest has the effect of registration as to him. The torrens system cannot be used as a shield for the commission of fraud (Gustillo v. Maravilla, 48 Phil. 442). As far as private respondent Zenaida Angeles and her husband Justiniano are concerned, the non-registration of the affidavit admitting their sale of a portion of 110 square meters of the subject land to petitioners cannot be invoked as a defense because (K)nowledge of an unregistered sale is equivalent to registration (Winkleman v. Veluz, 43 Phil. 604).

This knowledge of the conveyance to Honorato Hong can not be denied. The records disclose that after the sale, private respondent was able to introduce improvements on the land such as a concrete two-door commercial building, a concrete fence around the property, concrete floor of the whole area and G.I. roofing. Acts of ownership and possession were exercised by the private respondent over the land. By these overt acts, it can not therefore be gainsaid that petitioner was not aware that private respondent had a prior existing interest over the land.” (Bold Letters in the original)

In the instant case, Kwan cannot claim ignorance on Sps. Ocariza's adverse claim since it is annotated in the title ahead of her attachment. Thus, Kwan's argument that the attachment is superior to Sps. Ocariza's unregistered sale over the subject property cannot be given any credence since her knowledge to the couples interest thereto is equivalent to registration as to her.

WHEREFORE, the appeal is DENIED. the Decision dated November 16, 2000, rendered by the Regional Trial Court, Branch 16, Cebu City in Civil Case No. CEB-18461 is hereby AFFIRMED in toto.

SO ORDERED.

Ingles,[*] and Lopez, JJ., concur.

[*] Vice Justice Delos Santos who is on wellness leave per Office Order No. 13-14-GTI dated June 17, 2014.

[1] Rollo, pp. 59-65, penned by Presiding Judge Agapito Hontanosas, Jr.

[2] Records, pp. 1-8.

[3] Records, p. 9.

[4] Id.

[5] Complaint, supra (at p. 2).

[6] Id., (at pp. 2-3).

[7] Records, p. 10.

[8] Complaint supra note 2 (at pp. 3-4).

[9] Id., prayer portion (at pp. 6-7).

[10] Records, p. 17.

[11] Records, p. 36.

[12] Records, pp. 45-46.

[13] Records, p. 47.

[14] Records, pp. 82-85.

[15] Id. (at p. 82).

[16] Id. (at pp. 82-83).

[17] Records, pp. 86-87.

[18] Complaint (Intervention), supra (at p. 83).

[19] Id., (at pp. 83-84).

[20] Records, pp. 90-98.

[21] Records, pp. 112-122.

[22] Records, pp. 139-143.

[23] Culled from the Assailed Decision, supra note 1, (at p. 64).

[24] Records, p. 149.

[25] See Pre-Trial Order dated June 16, 1997, Records, pp. 169-170.

[26] Supra note 1.

[27] Villanueva v. Court of Appeals, G.R. No. 107624, January 28, 1997.

[28] Lee v. Bangkok Bank Public Company, G.R. No. 173349, February 9, 2011.

[29] Sajonas v. Court of Appeals, G.R. No. 102377, July 5, 1996.

[30] Id.

[31] G.R. No. 130223, August 19, 2009.

[32] Records, pp. 194-195.

[33] 414 Phil. 311, 323 (2001).

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