

MYRON C. PAPA, ADMINISTRATOR OF THE TESTATE ESTATE OF ANGELA M. BUTTE, PETITIONER, VS. A. U. VALENCIA AND CO. INC., FELIX PEÑARROYO, SPS. ARSENIO B. REYES & AMANDA SANTOS, AND ...

G.R. No. 105188. January 23, 1998

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

In this petition for review on certiorari under Rule 45 of the Rules of Court, petitioner Myron C. Papa seeks to reverse and set aside 1) the Decision dated 27 January 1992 of the Court of Appeals which affirmed with modification the decision of the trial court; and, 2) the Resolution dated 22 April 1992 of the same court, which denied petitioner's motion for reconsideration of the above decision.

The antecedent facts of this case are as follows:

Sometime in June 1982, herein private respondents A.U. Valencia and Co., Inc. (hereinafter referred to as respondent Valencia, for brevity) and Felix Peñarroyo (hereinafter called respondent Peñarroyo), filed with the Regional Trial Court of Pasig, Branch 151, a complaint for specific performance against herein petitioner Myron C. Papa, in his capacity as administrator of the Testate Estate of one Angela M. Butte.

The complaint alleged that on 15 June 1973, petitioner Myron C. Papa, acting as attorney-in-fact of Angela M. Butte, sold to respondent Peñarroyo, through respondent Valencia, a parcel of land, consisting of 286.60 square meters, located at corner Retiro and Cadiz Streets, La Loma, Quezon City, and covered by Transfer Certificate of Title No. 28993 of the Register of Deeds of Quezon City; that prior to the alleged sale, the said property, together with several other parcels of land likewise owned by Angela M. Butte, had been mortgaged by her to the Associated Banking Corporation (now Associated Citizens Bank); that after the alleged sale, but before the title to the subject property had been released, Angela M. Butte passed away; that despite representations made by herein respondents to the bank to release the title to the property sold to respondent Peñarroyo, the bank refused to release it unless and until all the mortgaged properties of the late Angela M. Butte were also redeemed; that in order to protect his rights and interests over the property, respondent Peñarroyo caused the annotation on the title of an adverse claim as evidenced by Entry No. P.E. - 6118/T-28993, inscribed on 18 January 1977.

The complaint further alleged that it was only upon the release of the title to the property, sometime in April 1977, that respondents Valencia and Peñarroyo discovered that the mortgage rights of the bank had been assigned to one Tomas L. Parpana (now deceased), as special administrator of the Estate of Ramon Papa, Jr., on 12 April 1977; that since then, herein petitioner had been collecting monthly rentals in the amount of P800.00 from the tenants of the property, knowing that said property had already been sold to private respondents on 15 June 1973; that despite repeated demands from said respondents, petitioner refused and failed to deliver the title to the property. Thereupon, respondents Valencia and Peñarroyo filed a complaint for specific performance, praying that petitioner be ordered to deliver to respondent Peñarroyo the title to the subject property (TCT 28993); to turn over

to the latter the sum of P72,000.00 as accrued rentals as of April 1982, and the monthly rental of P800.00 until the property is delivered to respondent Peñarroyo; to pay respondents the sum of P20,000.00 as attorney's fees; and to pay the costs of the suit.

In his Answer, petitioner admitted that the lot had been mortgaged to the Associated Banking Corporation (now Associated Citizens Bank). He contended, however, that the complaint did not state a cause of action; that the real property in interest was the Testate Estate of Angela M. Butte, which should have been joined as a party defendant; that the case amounted to a claim against the Estate of Angela M. Butte and should have been filed in Special Proceedings No. A-17910 before the Probate Court in Quezon City; and that, if as alleged in the complaint, the property had been assigned to Tomas L. Parpana, as special administrator of the Estate of Ramon Papa, Jr., said estate should be impleaded. Petitioner, likewise, claimed that he could not recall in detail the transaction which allegedly occurred in 1973; that he did not have TCT No. 28993 in his possession; that he could not be held personally liable as he signed the deed merely as attorney-in-fact of said Angela M. Butte. Finally, petitioner asseverated that as a result of the filing of the case, he was compelled to hire the services of counsel for a fee of P20,000.00, for which respondents should be held liable.

Upon his motion, herein private respondent Delfin Jao was allowed to intervene in the case. Making common cause with respondents Valencia and Peñarroyo, respondent Jao alleged that the subject lot which had been sold to respondent Peñarroyo through respondent Valencia was in turn sold to him on 20 August 1973 for the sum of P71,500.00, upon his paying earnest money in the amount of P5,000.00. He, therefore, prayed that judgment be rendered in favor of respondents Valencia and Peñarroyo; and, that after the delivery of the title to said respondents, the latter in turn be ordered to execute in his favor the appropriate deed of conveyance covering the property in question and to turn over to him the rentals which aforesaid respondents sought to collect from petitioner Myron C. Papa.

Respondent Jao, likewise, averred that as a result of petitioner's refusal to deliver the title to the property to respondents Valencia and Peñarroyo, who in turn failed to deliver the said title to him, he suffered mental anguish and serious anxiety for which he sought payment of moral damages; and, additionally, the payment of attorney's fees and costs.

For his part, petitioner, as administrator of the Testate Estate of Angela M. Butte, filed a third-party complaint against herein private respondents, spouses Arsenio B. Reyes and Amanda Santos (respondent Reyes spouses, for short). He averred, among others, that the late Angela M. Butte was the owner of the subject property; that due to non-payment of real estate tax said property was sold at public auction by the City Treasurer of Quezon City to the respondent Reyes spouses on 21 January 1980 for the sum of P14,000.00; that the one-year period of redemption had expired; that respondents Valencia and Peñarroyo had sued petitioner Papa as administrator of the estate of Angela M. Butte, for the delivery of the title to the property; that the same aforesaid respondents had acknowledged that the price paid by them was insufficient, and that they were willing to add a reasonable amount or a minimum of P55,000.00 to the price upon delivery of the property, considering that the same was estimated to be worth P143,000.00; that petitioner was willing to reimburse respondent Reyes spouses whatever amount they might have paid for taxes and other charges, since the subject property was still registered in the name of the late Angela M. Butte; that it was inequitable to allow respondent Reyes spouses to acquire property estimated to be worth P143,000.00, for a measly sum of P14,000.00. Petitioner prayed that judgment be rendered cancelling the tax sale to respondent Reyes spouses; restoring the subject property to him upon payment by him to said respondent Reyes spouses of the amount of P14,000.00, plus legal interest; and, ordering respondents Valencia and Peñarroyo to pay him at least P55,000.00 plus everything they might have to pay the Reyes spouses in recovering the property.

Respondent Reyes spouses in their Answer raised the defense of prescription of petitioner's right to redeem the property.

At the trial, only respondent Peñarroyo testified. All the other parties only submitted documentary proof.

On 29 June 1987, the trial court rendered a decision, the dispositive portion of which reads:

WHEREUPON, judgment is hereby rendered as follows:

1) Allowing defendant to redeem from third-party defendants and ordering the latter to allow the former to redeem the property in question, by paying the sum of P14,000.00 plus legal interest of 12% thereon from January 21, 1980;

2) Ordering defendant to execute a Deed of Absolute Sale in favor of plaintiff Felix Peñarroyo covering the property in question and to deliver peaceful possession and enjoyment of the said property to the said plaintiff, free from any liens and encumbrances;

Should this not be possible, for any reason not attributable to defendant, said defendant is ordered to pay to plaintiff Felix Peñarroyo the sum of P45,000.00 plus legal interest of 12% from June 15, 1973;

3) Ordering plaintiff Felix Peñarroyo to execute and deliver to intervenor a deed of absolute sale over the same property, upon the latter's payment to the former of the balance of the purchase price of P71,500.00;

Should this not be possible, plaintiff Felix Peñarroyo is ordered to pay intervenor the sum of P5,000.00 plus legal interest of 12% from August 23, 1973; and

4) Ordering defendant to pay plaintiffs the amount of P5,000.00 for and as attorney's fees and litigation expenses.

SO ORDERED.[1]

Petitioner appealed the aforesaid decision of the trial court to the Court of Appeals, alleging among others that the sale was never "consummated" as he did not encash the check (in the amount of P40,000.00) given by respondents Valencia and Peñarroyo in payment of the full purchase price of the subject lot. He maintained that what said respondents had actually paid was only the amount of P5,000.00 (in cash) as earnest money.

Respondent Reyes spouses, likewise, appealed the above decision. However, their appeal was dismissed because of failure to file their appellants' brief.

On 27 January 1992, the Court of Appeals rendered a decision, affirming with modification the trial court's decision, thus:

WHEREFORE, the second paragraph of the dispositive portion of the appealed decision is MODIFIED, by ordering the defendant-appellant to deliver to plaintiff-appellees the owner's duplicate of TCT No. 28993 of Angela M. Butte and the peaceful possession and enjoyment of the lot in question or, if the owner's duplicate certificate cannot be produced, to authorize the Register of Deeds to cancel it and issue a certificate of title in the name of Felix Peñarroyo. In all other respects, the decision appealed from is AFFIRMED. Costs against defendant-appellant Myron C. Papa.

SO ORDERED.[2]

In affirming the trial court's decision, respondent court held that contrary to petitioner's claim that he did not encash the aforesaid check, and therefore, the sale was not consummated, there was no evidence at all that petitioner did not, in fact, encash said check. On the other hand, respondent Peñarroyo testified in court that petitioner Papa had received the amount of P45,000.00 and issued receipts therefor. According to respondent

court, the presumption is that the check was encashed, especially since the payment by check was not denied by defendant-appellant (herein petitioner) who, in his Answer, merely alleged that he “can no longer recall the transaction which is supposed to have happened 10 years ago.”[3]

On petitioner’s claim that he cannot be held personally liable as he had acted merely as attorney-in-fact of the owner, Angela M. Butte, respondent court held that such contention is without merit. This action was not brought against him in his personal capacity, but in his capacity as the administrator of the Testate Estate of Angela M. Butte.[4]

On petitioner’s contention that the estate of Angela M. Butte should have been joined in the action as the real party in interest, respondent court held that pursuant to Rule 3, Section 3 of the Rules of Court, the estate of Angela M. Butte does not have to be joined in the action. Likewise, the estate of Ramon Papa, Jr., is not an indispensable party under Rule 3, Section 7 of the same Rules. For the fact is that Ramon Papa, Jr., or his estate, was not a party to the Deed of Absolute Sale, and it is basic law that contracts bind only those who are parties thereto.[5]

Respondent court observed that the conditions under which the mortgage rights of the bank were assigned are not clear. In any case, any obligation which the estate of Angela M. Butte might have to the estate of Ramon Papa, Jr. is strictly between them. Respondents Valencia and Peñarroyo are not bound by any such obligation.

Petitioner filed a motion for reconsideration of the above decision, which motion was denied by respondent Court of Appeals.

Hence, this petition wherein petitioner raises the following issues:

I. THE CONCLUSION OR FINDING OF THE COURT OF APPEALS THAT THE SALE IN QUESTION WAS CONSUMMATED IS GROUNDED ON SPECULATION OR CONJECTURE, AND IS CONTRARY TO THE APPLICABLE LEGAL PRINCIPLE.

II. THE COURT OF APPEALS, IN MODIFYING THE DECISION OF THE TRIAL COURT, ERRED BECAUSE IT, IN EFFECT, CANCELLED OR NULLIFIED AN ASSIGNMENT OF THE SUBJECT PROPERTY IN FAVOR OF THE ESTATE OF RAMON PAPA, JR. WHICH IS NOT A PARTY IN THIS CASE.

III. THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE ESTATE OF ANGELA M. BUTTE AND THE ESTATE OF RAMON PAPA, JR. ARE INDISPENSABLE PARTIES IN THIS CASE.[6]

Petitioner argues that respondent Court of Appeals erred in concluding that the alleged sale of the subject property had been consummated. He contends that such a conclusion is based on the erroneous presumption that the check (in the amount of P40,000.00) had been cashed, citing Art. 1249 of the Civil Code, which provides, in part, that payment by checks shall produce the effect of payment only when they have been cashed or when through the fault of the creditor they have been impaired.[7] Petitioner insists that he never cashed said check; and, such being the case, its delivery never produced the effect of payment. Petitioner, while admitting that he had issued receipts for the payments, asserts that said receipts, particularly the receipt of PCIB Check No. 761025 in the amount of P40,000.00, do not prove payment. He avers that there must be a showing that said check had been encashed. If, according to petitioner, the check had been encashed, respondent Peñarroyo should have presented PCIB Check No. 761025 duly stamped received by the payee, or at least its microfilm copy.

Petitioner finally avers that, in fact, the consideration for the sale was still in the hands of respondents Valencia and Peñarroyo, as evidenced by a letter addressed to him in which said respondents wrote, in part:

x x x. Please be informed that I had been authorized by Dr. Ramon Papa, Jr., heir of Mrs. Angela M. Butte to

pay you the aforementioned amount of P75,000.00 for the release and cancellation of subject property's mortgage. The money is with me and if it is alright with you, I would like to tender the payment as soon as possible. x x x.[8]

We find no merit in petitioner's arguments.

It is an undisputed fact that respondents Valencia and Peñarroyo had given petitioner Myron C. Papa the amounts of Five Thousand Pesos (P5,000.00) in cash on 24 May 1973, and Forty Thousand Pesos (P40,000.00) in check on 15 June 1973, in payment of the purchase price of the subject lot. Petitioner himself admits having received said amounts,[9] and having issued receipts therefor.[10] Petitioner's assertion that he never encashed the aforesaid check is not substantiated and is at odds with his statement in his answer that "he can no longer recall the transaction which is supposed to have happened 10 years ago." After more than ten (10) years from the payment in part by cash and in part by check, the presumption is that the check had been encashed. As already stated, he even waived the presentation of oral evidence.

Granting that petitioner had never encashed the check, his failure to do so for more than ten (10) years undoubtedly resulted in the impairment of the check through his unreasonable and unexplained delay.

While it is true that the delivery of a check produces the effect of payment only when it is cashed, pursuant to Art. 1249 of the Civil Code, the rule is otherwise if the debtor is prejudiced by the creditor's unreasonable delay in presentment. The acceptance of a check implies an undertaking of due diligence in presenting it for payment, and if he from whom it is received sustains loss by want of such diligence, it will be held to operate as actual payment of the debt or obligation for which it was given.[11] It has, likewise, been held that if no presentment is made at all, the drawer cannot be held liable irrespective of loss or injury[12] unless presentment is otherwise excused. This is in harmony with Article 1249 of the Civil Code under which payment by way of check or other negotiable instrument is conditioned on its being cashed, except when through the fault of the creditor, the instrument is impaired. The payee of a check would be a creditor under this provision and if its non-payment is caused by his negligence, payment will be deemed effected and the obligation for which the check was given as conditional payment will be discharged.[13]

Considering that respondents Valencia and Peñarroyo had fulfilled their part of the contract of sale by delivering the payment of the purchase price, said respondents, therefore, had the right to compel petitioner to deliver to them the owner's duplicate of TCT No. 28993 of Angela M. Butte and the peaceful possession and enjoyment of the lot in question.

With regard to the alleged assignment of mortgage rights, respondent Court of Appeals has found that the conditions under which said mortgage rights of the bank were assigned are not clear. Indeed, a perusal of the original records of the case would show that there is nothing there that could shed light on the transactions leading to the said assignment of rights; nor is there any evidence on record of the conditions under which said mortgage rights were assigned. What is certain is that despite the said assignment of mortgage rights, the title to the subject property has remained in the name of the late Angela M. Butte.[14] This much is admitted by petitioner himself in his answer to respondents' complaint as well as in the third-party complaint that petitioner filed against respondent-spouses Arsenio B. Reyes and Amanda Santos.[15] Assuming *arquendo* that the mortgage rights of the Associated Citizens Bank had been assigned to the estate of Ramon Papa, Jr., and granting that the assigned mortgage rights validly exist and constitute a lien on the property, the estate may file the appropriate action to enforce such lien. The cause of action for specific performance which respondents Valencia and Peñarroyo have against petitioner is different from the cause of action which the estate of Ramon Papa, Jr. may have to enforce whatever rights or liens it has on the property by reason of its being an alleged assignee of the bank's rights of mortgage.

Finally, the estate of Angela M. Butte is not an indispensable party. Under Section 3 of Rule 3 of the Rules of Court, an executor or administrator may sue or be sued without joining the party for whose benefit the action is presented or defended, thus:

Sec. 3. Representative parties. - A trustee of an express trust, a guardian, executor or administrator, or a party authorized by statute, may sue or be sued without joining the party for whose benefit the action is presented or defended; but the court may, at any stage of the proceedings, order such beneficiary to be made a party. An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal.[16]

Neither is the estate of Ramon Papa, Jr. an indispensable party without whom, no final determination of the action can be had. Whatever prior and subsisting mortgage rights the estate of Ramon Papa, Jr. has over the property may still be enforced regardless of the change in ownership thereof.

WHEREFORE, the petition for review is hereby DENIED and the Decision of the Court of Appeals, dated 27 January 1992 is AFFIRMED.

SO ORDERED.

Davide, Jr., Bellosillo, and Vitug, JJ., concur.

[1] Rollo, pp. 70-71.

[2] Rollo, pp. 41-42.

[3] Id., at 40.

[4] Id., at 41.

[5] Id., at 40-41.

[6] Id., at 23-24.

[7] Art. 1249. The payment of debts in money shall be made in the currency stipulated, and if it is not possible to deliver such currency, then in the currency which is legal tender in the Philippines.

The delivery of promissory notes payable to order, or bills of exchange or other mercantile documents shall produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired.

In the meantime, the action derived from the original obligation shall be held in abeyance.

[8] Rollo., p. 26.

[9] Id., at 132.

[10] Id., at 25.

[11] 60 AM. JUR. 2d, Sec. 59.

[12] Campos and Lopez-Campos, Negotiable Instruments Law, 4th Edition (1990), p. 561 citing Rodriguez vs. Hardouin, 15 La. App. 112, 131 So. 593.

[13] Id., at 560 citing Gabon vs. Balagot, 53 O.G. No. 11, 3504.

[14] Rollo, p. 41.

[15] Original Records, p. 162.

[16] This section has been amended by the 1997 Rules of Civil Procedure to read as follows:

Sec. 3. Representatives as parties. - Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest. A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal.

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