

**DIRECT FUNDERS HOLDINGS CORPORATION, PETITIONER, VS.
JUDGE CELSO D. LAVIÑA, PRESIDING JUDGE OF RTC-PASIG CITY,
BRANCH 71 AND KAMBIK Y. CHAN, JR., RESPONDENTS.**

G.R. No. 141851. January 16, 2002

Ponente: PARDO, J.

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PARDO, J.:

The Case

The petition at bar[1] seeks to review the decision[2] of the Court of Appeals[3] dismissing the petition assailing the ruling of the trial court issuing a writ of preliminary injunction that restrained a writ of possession issued by a coordinate court.[4]

The Facts

The facts, as found by the Court of Appeals, are as follows:

“It is alleged by the petitioner that the respondent Judge issued the writ of preliminary injunction, despite clear and express prayer in the Amended Complaint (Rollo, p. 23) that private respondent Kambik Y. Chan, Jr. sought the issuance of a writ of preliminary mandatory injunction. This is again despite the fact this error was brought to respondent Judge’s attention denied the Motion for Reconsideration on May 29, 1998 justifying the issuance thereof due to petitioner’s alleged misappreciation of facts and reliefs sought for.

“Culled from the records of the case, the action a quo is for annulment of documents, reconveyance, recovery of possession, damages with application for the issuance of a writ of preliminary mandatory injunction and temporary restraining order.

“During the hearing for the issuance of temporary restraining order, it was made clear to the respondent Judge that the property in question was occupied by the petitioner by virtue of a writ of possession issued by the Regional Trial Court of Pasig, Branch 157 in LRC Case No. R-5475 in a petition for the issuance of writ of possession thereof way back on October 23, 1997 (Rollo, p. 22). Despite the lawful order of a coordinate and co-equal court, the respondent Judge, presiding Regional Trial Court of Pasig, Branch 71, issued the questioned orders to restore possession to private respondent Chan, alleging an obviously grave abuse of discretion, tantamount to lack of jurisdiction (Rollo, p. 38).

“On the same date on December 8, 1997, the temporary restraining order (TRO) was issued, the Court Sheriff IV Cresencio Rabello, Jr. implemented the TRO and submitted the Return on December 9, 1997 (Rollo, p. 39).

“Then, on January 21, 1998, the respondent Judge issued the questioned order granting the issuance of a writ of preliminary injunction (Rollo, p. 14) who subsequently denied the petitioner’s motion to dismiss and supplemental motion to dismiss and the very urgent motion for reconsideration on February 16, 1998.

“On May 29, 1998, the motion for inhibition and the motion to dissolve the writ of preliminary injunction were also denied (Rollo, p. 18).”[5]

On August 5, 1998, petitioner filed with the Court of Appeals a petition for certiorari and prohibition assailing the trial court's issuance of a writ of preliminary injunction.[6]

On September 28, 1999, the Court of Appeals promulgated a decision dismissing the petition ruling that the trial court had jurisdiction to issue the injunction that did not interfere with the writ of possession of a coordinate court.[7]

On October 19, 1999, petitioner filed with the Court of Appeals a motion for reconsideration of the decision.[8]

On February 2, 2000, the Court of Appeals denied petitioner's motion stating that the arguments advanced were "mere reiteration and restatements of those contained in their pleadings x x x." [9]

Hence, this appeal.[10]

The Issue

The issue raised is whether the Court of Appeals erred in affirming the trial court's ruling issuing a writ of injunction restraining a writ of possession in another case to place respondent back in possession of the subject property.

In other words, the issue is who between petitioner and respondent Kambiak Y. Chan, Jr. has a better right to the possession of the subject property?

The Court's Ruling

We resolve the issue in favor of petitioner.

The conditional sale agreement was the only document that the respondent presented during the summary hearing of the application for a temporary restraining order before the Regional Trial Court, Branch 71, Pasig City.[11]

We find that the conditional sale agreement is officious and ineffectual. First, it was not consummated. Second, it was not registered and duly annotated on the Transfer Certificate of Title (No. 12357) covering the subject property. Third, it was executed about eight (8) years after the execution of the real estate mortgage over the subject property.

To emphasize, the mortgagee (United Savings Bank) did not give its consent to the change of debtor. It is a fundamental axiom in the law on contracts that a person not a party to an agreement cannot be affected thereby. Worse, not only was the conditional sale agreement executed without the consent of the mortgagee-creditor, United Savings Bank, the same was also a material breach of the stipulations of the real estate mortgage over the subject property. The real estate mortgage, in part, provides:

"(j) The MORTGAGOR shall neither lease the mortgaged property/ies, nor sell or dispose of the same in any manner, without the written consent of the MORTGAGEE. However, if notwithstanding this stipulation and during the existence of this mortgage, the property/ies herein mortgaged, or any portion thereof, is/are leased or sold, x x x. It shall also be incumbent upon the MORTGAGOR to make it a condition of the sale or alienation that the vendee, or any other party in whose favor the alienation is made, shall recognize as first lien the existing mortgage or encumbrance in favor of the MORTGAGEE, as well as any new modified mortgage covering the same properties to be executed by said MORTGAGOR in favor of the MORTGAGEE, and shall thereafter agree, promise and bind himself to recognize and respect any extension of the terms of the original mortgage granted by the MORTGAGEE in favor of the MORTGAGOR and such extended mortgage shall be considered as prior to such encumbrance as the original mortgage. It is also further understood that should the MORTGAGOR sell, transfer or in any manner alienate or encumber the mortgaged property/ies in violation of this agreement, he/she shall be liable for damages to the MORTGAGEE." [12]

The conditions of the conditional sale agreement were not fulfilled, hence, respondent's claim to the subject property was as heretofore stated ineffectual. Article 1181 of the Civil Code reads:

“Art. 1181. In conditional obligations, the acquisition of rights, as well as the extinguishments or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition.”

On the other hand, petitioner's right to the subject property is based on the following:

- The real estate mortgage constituted by the Sps. Espino duly registered and annotated on TCT No. 12357 covering the subject property.
- The Deed of Assignment dated 15 January 1997 executed by UCPB Savings Bank (formerly United Savings Bank) whereby it conveyed its rights as mortgagee in favor of the petitioner.
- The Deed of Assignment of Right of Redemption dated 15 January 1997, executed by the Sps. Espino wherein they assigned their right of redemption over the subject property to UCPB Savings Bank and the latter's successors-in-interest.
- The Certificate of Sale dated 29 May 1997 executed by the sheriff, the affidavit of consolidation of ownership dated July 1997 (denominated as Doc. No. 490; Page No. 99. Book No. CLVII, Series of 1997 in the Notarial Books of Erlinda B. Espejo, Notary Public for Quezon City) and TCT No. 8559-R subsequently issued to Petitioner.
- The Order dated 23 October 1997 of Branch 157, RTC, Pasig City (LRC No. R-5475) and the Turn-over/Delivery of Possession of the sheriff in the said LRC case.

In *Soriano v. Bautista*,^[13] the Deed of Real Estate Mortgage dated May 30, 1956 executed by the mortgagors contained a stipulation giving the mortgagee the option to purchase the land subject of the mortgage on any date within the 2-year period of the mortgage. The mortgagee subsequently decided to buy the land pursuant to this stipulation. We ruled:

“Appellants contend that, being mortgagors, they cannot be deprived of the right to redeem the mortgaged property, because such right is inherent in and inseparable from this kind of contract. The premise of the contention is not entirely accurate. While the transaction is undoubtedly a mortgage and contains the customary stipulation concerning redemption, it carries the added special provision aforequoted, which renders the mortgagors' right to redeem defeasible at the election of the mortgages. There is nothing illegal or immoral in this. It is simply an option to buy, sanctioned by Article 1479 of the Civil Code, which states: “A promise to buy and sell a determinate thing for a price certain is binding upon the promisor if the promise is supported by a consideration distinct from the price.” ^[14]

In view of all of the foregoing, it is inexorable to conclude that petitioner, not the respondent, has a better right to the possession of subject property.

The Judgment

WHEREFORE, the Court hereby REVERSES the decision of the Court of Appeals^[15] and the order denying reconsideration.

In lieu thereof, the Court renders judgment dismissing the case below, Civil Case No. 66554 of the Regional Trial Court, Branch 71, Pasig City, including the counterclaims.

No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

[1] Under Rule 45, Revised Rules of Court.

[2] In CA-G. R. SP No. 48547, promulgated on September 28, 1999, Amin, J., ponente, Hofileña and Sabio, JJ., concurring.

[3] And the resolution adopted on February 2, 2000 denying reconsideration. Petition, Annex “H”, Rollo, pp. 140-141.

[4] In CA-G. R. SP No. 48547, entitled “Direct Funders Holdings Corporation, Petitioner, v. Judge Celso D. Laviña and Kambiak Y. Chan, Jr., Respondents. Petition, Annex “G”, Rollo, pp. 123-138.

[5] Petition, Annex “F”, Rollo, pp. 113-122.

[6] CA Rollo, pp. 2-13.

[7] Branch 157, RTC Pasig City; LRC Case No. R-5475.

[8] Petition, Annex “G”, Rollo, pp. 123-138.

[9] Petition, Annex “H”, Rollo, pp. 140-141.

[10] Filed on March 27, 2000, Petition, Rollo, pp. 14-39. On September 3, 2001, we gave due course to the petition, Rollo, pp. 305-306.

[11] In Civil Case No. 66554.

[12] Petition, Annex “E”, Rollo, pp. 53-81, at p. 64.

[13] 116 Phil. 1235 [1962].

[14] At p. 1238.

[15] In CA-G. R. SP No. 48547, promulgated on September 28, 1999.

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