

B & I REALTY CO., INC., Petitioner, vs. TEODORO CASPE and PURIFICACION AGUILAR CASPE, Respondents.

G.R. No. 146972. January 29, 2008

Ponente: CORONA, J.

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CORONA, J.:

This petition for review on certiorari seeks to set aside the February 7, 2001 decision[1] of the Court of Appeals (CA) in CA-G.R. C.V. No. 57273.

This case stems from two earlier complaints filed by Spouses Arsenio and Consorcia L. Venegas[2] against herein petitioner B & I Realty Co., Inc., respondent spouses Teodoro and Purificacion Aguilar Caspe, and a certain Arturo G. Datuin.[3]

Consorcia L. Venegas was the owner of a parcel of land located in Barrio Bagong-Ilog in Pasig, Rizal and covered by TCT No. 247434. She delivered said title to, and executed a simulated deed of sale in favor of, Datuin for purposes of obtaining a loan with the Rizal Commercial Banking Corporation (RCBC). Datuin claimed that he had connections with the management of RCBC and offered his assistance to Venegas in obtaining a loan from the bank. He issued a receipt to the Venegases, acknowledging that the lot was to be used as a collateral for bank financing and that the deed of sale (with a resolutive condition) was executed only as a device to obtain the loan.

However, Datuin prepared a deed of absolute sale and, through forgery, made it appear that the spouses Venegas executed the document in his favor. He was then able to have the TCT transferred to his name. Consequently, TCT No. 247434 was cancelled and a new title, TCT No. 377734, was issued to him by the register of deeds. Thereafter, he obtained a loan from petitioner in the amount of P75,000 using the title of the property as collateral for the loan. The mortgage was annotated at the back of the title.

Venegas learned of Datuin's fraudulent scheme when she sold the lot (subject of the mortgage) to herein respondents for P160,000 in a deed of conditional sale.[4] She, along with her husband, instituted a complaint against Datuin in the then Court of First Instance (CFI) of Rizal, Branch 11, docketed as Civil Case No. 188893, for recovery of property and nullification of TCT No. 377734, with damages. However, when the case was called for pre-trial, the Venegases' counsel failed to appear and the complaint was eventually dismissed without prejudice.

Thereafter, Venegas and her husband, respondents and Datuin entered into a compromise agreement whereby the Venegases agreed to sell and transfer the property to respondents with the condition that they (respondents) would assume and settle Datuin's mortgage debt to petitioner. The amount corresponding to the unpaid mortgage would be deducted from the consideration.

As provided for in the agreement, Datuin executed a deed of absolute sale over the property covered by TCT No. 377734 in favor of respondents. On February 12, 1976, the respondents started paying their assumed mortgage obligation to petitioner.

However, on August 27, 1980, Venegas brought a new action before the CFI of Pasig, Branch 6, docketed as Civil Case No. 36852, for annulment of the transfer of the property to Datuin and the declaration of nullity of all transactions involving and annotated on TCT No. 377734, including the mortgage executed in favor of petitioner, as well as the cancellation of the conditional deed of sale to respondents. On January 10, 1986, the trial court ruled in favor of respondents, to wit:

WHEREFORE, judgment is hereby rendered in favor of the defendants spouses Teodoro Caspe and Purificacion A. Caspe on their counterclaims and ordering the complaint of plaintiffs [spouses Venegas] as well as the counterclaims of B & I Realty Co, Inc. dismissed. Arturo G. Datuin is ordered to pay the damages suffered by the defendants-Caspe[s] PhP10,000.00 as compensatory and consequential damages; PhP5,000.00 moral damages and PhP5,000.00 attorney's fees and to pay the costs.

The sale between Consorcia Venegas and Arturo G. Datuin is declared void from the beginning. Consequently, the transfer of title no. 247434 from Venegas to Datuin is hereby ordered non-existent and Transfer Certificate of Title No. 377734 in the name of Arturo G. Datuin is hereby cancelled. The Conditional Deed of Sale between the Venegas and the Caspes is declared valid and approved. All payments of Caspes to Venegas or agents, to Datuin and to B & I Realty Co. Inc. are considered part of the PhP160,000.00 consideration or purchase price.

The mortgage between Datuin and the B & I Realty Co., Inc. is hereby declared cancelled and B & I Realty Co., Inc. is hereby ordered to deliver the title to the Caspes upon the latter paying said financing company the remaining balance of PhP15,132.00. The Register of Deeds of Rizal is hereby ordered to cancel Transfer Certificate of Title No. 377734 in the name of Arturo G. Datuin and in lieu to issue a new title in the name of Teodoro Caspe and Purificacion A. Caspe.

Petitioner interposed an appeal to the CA. On October 31, 1989, the CA held that all pronouncements in the aforesaid CFI decision pertaining to petitioner had no binding effect on it. It reasoned that the appealed decision adversely affected petitioner on the basis of evidence presented ex-parte by respondents without according the former the opportunity to controvert the same, in violation of the due process clause. However, the CA affirmed the rest of the judgment.[5]

Respondents filed a motion for reconsideration[6] which was denied on January 25, 1990.[7] It became final and executory as respondents did not appeal the denial thereof.

On May 12, 1993, petitioner sent a demand letter to respondents for the payment of their loan. The latter refused to pay.

On August 27, 1993, petitioner filed an action for judicial foreclosure of mortgage, the subject of the instant petition for review, against respondents before the Regional Trial Court (RTC), Branch 166, Pasig City. It was docketed as SCA 447. In their answer, respondents argued that the action had already prescribed.

On August 26, 1997, the RTC ruled in favor of petitioner. The trial court held that the defense of prescription could not prosper as it was not pleaded by respondents in their motion to dismiss.

Respondents appealed to the CA which reversed the RTC decision and dismissed petitioner's action for judicial foreclosure. It stated that, although the defense of prescription was not pleaded in the motion to dismiss,[8] the same was, however, pleaded in the answer[9] and in their motion to set case for hearing on the special affirmative defenses.[10] As such, respondents could not have waived the defense of prescription. The CA further held that the action had indeed prescribed. It cited Section 1, Rule 9 of the 1997 Rules of Court:

Section 1. Defenses and objections not pleaded. - Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on

record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim. (emphasis supplied by the CA)

Petitioner questioned the CA ruling that respondents did not waive the defense of prescription. It argued that, as its complaint for judicial foreclosure of mortgage was filed on August 27, 1993 before the effectivity of the 1997 Rules of Court, the provision did not apply to the instant case. It invoked the old rule in the 1964 Rules of Court as basis that its cause of action had not yet prescribed.

Petitioner's contention is untenable.

Before addressing the merits of the controversy, we shall first discuss a preliminary matter relating to the application of the mode of appeal under Rule 45 of the Rules of Court.

It should be noted that the jurisdiction of this Court in a petition for review on certiorari under Rule 45 is limited only to questions of law. This Court is not a trier of facts. The findings of fact of the CA are binding and conclusive on this Court. However, the application of this rule is not absolute and admits of certain exceptions. For instance, factual findings of the CA may be reviewed by this Court when the findings of fact of the RTC and the CA are conflicting.[11] In this case, the RTC held that the action had already prescribed; the CA ruled otherwise. Thus, although the petition now before us involves a question of fact, that is, whether or not the action for judicial foreclosure of mortgage has already prescribed, we may still rule on the same.

We now proceed to the merits of this controversy.

On one hand, the CA erred when it held that there was no waiver of the defense of prescription even if it was invoked only in the answer and in the motion to set case for hearing on the affirmative defenses, and not in the motion to dismiss, because it should have been raised at the earliest possible time, in this case, in the motion to dismiss. Thus, it was deemed waived in accordance with the "omnibus motion rule." [12]

On the other hand, however, the CA was correct in applying the 1997 Rules of Court. Procedural laws may be given retroactive application in cases of actions pending and undetermined at the time of their passage.[13] In this case, the action was still pending in the RTC when the 1997 Rules of Court was promulgated on July 1, 1997. The RTC decided the case on August 26, 1997. Thus, retroactive application of the 1997 Rules was proper. Ultimately, the CA did not commit any error when it granted respondents' appeal. It correctly applied the 1997 Rules of Court and rightly ruled in favor of prescription as the same was supported by the evidence on record.

In fact, it was the evidence of the petitioner itself which proved that prescription had set in:

- a duplicate original of the deed of real estate mortgage,[14] executed by Arturo G. Datuin, showing that the mortgage was executed on May 17, 1973. This deed of real estate mortgage expressly provided that the mortgage loan (was to) be repaid within one year from the date thereof, or on May 17, 1974.
- a duplicate original of the promissory note,[15] executed by Datuin on May 17, 1973, showing that he was indebted to petitioner in the amount of P75,000 secured by a deed of real estate mortgage.
- a machine copy of the compromise agreement,[16] dated June 11, 1975, executed by spouses Venegas, Datuin and respondents, showing that the mortgaged property was sold and transferred to respondents on the condition that they would assume and settle in full Datuin's mortgage loan to petitioner.
- a machine copy of the deed of absolute sale,[17] dated October 30, 1975, showing the sale of the mortgaged property between Arturo G. Datuin and respondents. In this instrument, respondents acknowledged their assumption of Datuin's mortgage.

- a statement of account of defendants[18] showing the computation of the interests and service fees on the loan. In the said statement of account, payments made by respondents to petitioner were duly reflected. The series of payments began on February 12, 1976 and ended on January 14, 1980.
- the complaint for judicial foreclosure of real state mortgage was instituted on August 27, 1993.

Article 1142 of the Civil Code provides:

Art. 1142. A mortgage action prescribes after ten years.

Article 1155 also provides that the prescription of actions is interrupted in the following instance:

Art. 1155. The prescription of actions is interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor.

Although the deed of real estate mortgage and the promissory note executed by Datuin expressly declared that the date of maturity of the loan was May 14, 1974 or one year after the real estate mortgage was entered into between Datuin and petitioner, the same could not be the reckoning point for purposes of counting the prescriptive period of the mortgage. This is because Datuin and respondents executed a deed of absolute sale on October 30, 1975 whereby the latter acknowledged and assumed the mortgage obligation of the former in favor of petitioner. Under Article 1155 of the Civil Code, the written acknowledgment and assumption of the mortgage obligation by respondents had the effect of interrupting the prescriptive period of the mortgage action.[19]

A perusal of the evidence for the petitioner, as may be gleaned from the statement of account of respondents prepared by petitioner itself, revealed that respondents made payments to the former beginning February 12, 1976 up to January 14, 1980. No other payments were made thereafter.

We have held in a number of cases that the computation of the prescriptive period of any cause of action (the same as prescription of actions) starts from the date when the cause of action accrues.[20] Here, petitioner's cause of action accrued from the time respondents stopped paying the mortgage debt they assumed from Datuin, in accordance with Article 1151 of the Civil Code:

Art. 1151. The time for the prescription of actions which have for their object the enforcement of obligations to pay principal with interest or annuity runs from the last payment of the annuity or of the interest.

It was then that respondents committed a breach of duty to pay their remaining obligation to the former.[21] Thus, the ten-year prescriptive period should be reckoned from January 14, 1980. Petitioner had until January 14, 1990 to file suit so that, when it sued on August 27, 1993, the action had already prescribed.

However, even if we apply the 1964 Rules of Court as petitioner wants, its cause of action had prescribed just the same.

Section 8, Rule 15 of the 1964 Rules of Court provided:

Sec. 8. Omnibus motion. - A motion attacking a pleading or a proceeding shall include all objections then available, and all objections not so included shall be deemed waived. (emphasis supplied)

Petitioner contends that the 1964 Rules unequivocally provided that a motion attacking a pleading should state all the objections available at the time of its filing. Otherwise, they were deemed waived. This was in stark contrast to the present rule which provides for instances when other objections may be made even after such an omnibus motion has already been filed.

Admittedly, respondents interposed the defense of prescription only in their answer after having filed their motion

to dismiss without alleging the said defense. Hence, in accordance with the old rule, respondents' defense could not prosper as the same was deemed waived.

It should be pointed out that the difference between the two provisions is more apparent than real. A review of the pertinent jurisprudence under the old rule reveals the existence of exceptions to the general rule.

In *Philippine National Bank v. Perez, et al.*,^[22] the Court held that:

The rule does not obtain when the evidence shows that the cause of action upon which plaintiff's complaint is based is already barred by the statute of limitations. (emphasis supplied)

The Court made the same pronouncement in *Philippine National Bank v. Pacific Commission House*^[23] when, despite defendant's having been declared in default for failure to answer after service of summons, it held that:

xxx [T]he fact that the plaintiff's own allegation in the complaint or the evidence it presented shows clearly that the action had prescribed removes this case from the rule regarding waiver of the defense by failure to plead the same.

In the case at bar, and as already explained, the evidence of the petitioner itself showed that prescription had in fact set in.

Petitioner, however, argues that the filing of Civil Case No. 36852 by the Venegases had the effect of interrupting the prescriptive period for the filing of the complaint for judicial foreclosure of mortgage. We disagree.

Petitioner is clutching at straws to justify its failure to institute the action within the required period. We agree with the CA's ruling that Civil Case No. 36852 did not have the effect of interrupting the prescription of the action for foreclosure of mortgage as it was not an action for foreclosure but one for annulment of title and nullification of the deed of mortgage and the deed of sale. It was not at all the action contemplated in Article 1155 of the Civil Code which explicitly provides that the prescription of an action is interrupted only when the action itself is filed in court.

Petitioner nevertheless claims that it had to wait for the decision in Civil Case No. 36852 before it could file a complaint for judicial foreclosure of mortgage as the same would have constituted forum shopping. Petitioner's argument is misplaced.

Petitioner could have protected its right over the property by filing a cross-claim^[24] for judicial foreclosure of mortgage against respondents in Civil Case No. 36852. The filing of a cross-claim would have been proper there. All the issues pertaining to the mortgage — validity of the mortgage and the propriety of foreclosure — would have been passed upon concurrently and not on a piecemeal basis. This should be the case as the issue of foreclosure of the subject mortgage was connected with, or dependent on, the subject of annulment of mortgage in Civil Case No. 36852.

The records indicate that petitioner even threatened to foreclose on the mortgage during the pendency of Civil Case No. 36852. This prompted respondents to ask the trial court to issue an order to restrain petitioner from proceeding with the institution of such an action pending the disposition of the case, to maintain the status quo.^[25] Petitioner cannot now claim that it had to wait for the decision of the court in Civil Case No. 36852 before it could institute the foreclosure. Its actuations clearly manifested that it knew its rights under the law but chose to sleep on the same.

WHEREFORE, the petition is hereby DENIED. The February 7, 2001 decision of the Court of Appeals in CA-G.R. C.V. No. 57273 is AFFIRMED.

Costs against petitioner.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Azcuna, and Leonardo-De Castro, JJ., concur.

[1] Penned by Associate Justice Ma. Alicia Austria-Martinez (now a member of this Court) and concurred in by Associate Justices Hilarion L. Aquino (retired) and Jose L. Sabio, Jr. of the Fourth Division of the Court of Appeals. Rollo, pp. 23-31.

[2] Not a party to this case.

[3] Also not a party to this case.

[4] Exhibit “H,” rollo, pp. 31-39.

[5] Penned by Justice Jesus M. Elbinias (retired) and concurred in by Associate Justices Ricardo J. Francisco (who subsequently became a member of this Court; now deceased) and Antonio M. Martinez (who also subsequently became a member of this Court; also deceased). Exhibit “M,” id., pp. 101-106.

[6] Dated December 11, 1989. Annex N of the Complaint, id., pp. 107-116.

[7] Exhibit “N,” id., pp. 117-118.

[8] Dated November 3, 1993, RTC records, pp. 132-140.

[9] Dated January 29, 1996, id., pp. 309-314.

[10] Dated February 8, 1996, id., pp. 315-320.

[11] Baricuatro, Jr. v. CA, 382 Phil. 15, 24 (2000).

[12] Citibank, N.A. v. CA, G.R. No. 61508, 17 March 1999, 304 SCRA 679, 693-694; Manacop v. CA, G.R. No. 104875, 13 November 1992, 215 SCRA 773, 778.

[13] Ruiz v. CA, G.R. No. 116909, 25 February 1999, 303 SCRA 637, 644; Municipal Government of Coron, Palawan v. Carino, No. L-65894, 24 September 1987, 154 SCRA 216, 222.

[14] Annex A of the Complaint, RTC records, pp. 17-18.

[15] Annex B of the Complaint, id., p. 19.

[16] Annex E of the Complaint, id., pp. 26-30. This machine copy was stipulated as a faithful reproduction of the original.

[17] Annex C of the Complaint, id., pp. 20-22. This machine copy was stipulated as a faithful reproduction of the original.

[18] Exhibit “O-4,” Plaintiff's Offer of Evidence.

[19] Provident Savings Bank v. CA, G.R. No. 97218, 17 May 1993, 222 SCRA 125, 132, citing Osmena v. Rama, 14 Phil. 99, 102 (1909) and 4 Tolentino, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, 1991 ed., p. 50.

[20] Elido, Sr. v. CA, G.R. No. 95441, 16 December 1992, 216 SCRA 637, 644; Nabus v. CA, G.R. No. 91670, 7

February 1991, 193 SCRA 732, 747.

[21] *Young v. CA*, G.R. No. 83271, 8 May 1991, 196 SCRA 795, 801; *Nabus v. CA*, *supra* at note 20.

[22] No. L-20412, 28 February 1966, 16 SCRA 270, 272.

[23] No. L-22675, 28 March 1969, 27 SCRA 766, 768.

[24] Section 7, Rule 6 of the 1964 Rules of Court provided:

Sec. 7. Cross-claim. - A cross-claim is any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

See *Ligon v. CA*, G.R. No. 127683, 7 August 1998, 294 SCRA 73, 76. Although the issue therein did not touch on the prescriptive period of mortgages, it illustrates that a cross-claim may be filed by a mortgagee against the mortgagor in an action for annulment of mortgage, impleading the former, filed by a person not a party to the mortgage.

In the aforementioned case, petitioner was the mortgagee in three deeds of mortgage covering two parcels of land executed by the Islamic Directorate of the Philippines (IDP). IDP sold the two parcels of land to Iglesia ni Cristo (INC). When IDP failed to comply with a condition stipulated in the deed of absolute sale executed by the parties, the INC filed a complaint for specific performance with damages against IDP with the RTC of Quezon City. The trial court ruled in favor of INC. Thereafter, INC filed with the same RTC a complaint for the annulment of the deeds of mortgage over the two lots, impleading as defendants Ligon, IDP and two other parties. Ligon filed an answer with counter-claim, a cross-claim against IDP for the foreclosure of the mortgages and a third-party complaint against several other parties.

[25] Exhibit "J," RTC records, p. 49.

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