SPOUSES GODOFREDO & DOMINICA FLANCIA, PETITIONERS, VS. COURT OF APPEALS & WILLIAM ONG GENATO, RESPONDENTS.

G.R. NO. 146997. April 26, 2005

Ponente: CORONA, J.

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CORONA, J.:

Before us is a petition for review under Rule 45 of the Rules of Court, seeking to set aside the October 6, 2000 decision[1] of the Court of Appeals in CA-G.R. CV No. 56035.

The facts as outlined by the trial court[2] follow.

> This is an action to declare null and void the mortgage executed by defendant Oakland Development Resources Corp. xxx in favor of defendant William Ong Genato over the house and lot plaintiffs spouses Godofredo and Dominica Flancia purchased from defendant corporation.
>
> In the complaint, plaintiffs allege that they purchased from defendant corporation a parcel of land known as Lot 12, Blk. 3, Phase III-A containing an area of 128.75 square meters situated in Prater Village Subd. II located at Brgy. Old Balara, Quezon City; that by virtue of the contract of sale, defendant corporation authorized plaintiffs to transport all their personal belongings to their house at the aforesaid lot; that on December 24, 1992, plaintiffs received a copy of the execution foreclosing [the] mortgage issued by the RTC, Branch 98 ordering defendant Sheriff Sula to sell at public auction several lots formerly owned by defendant corporation including subject lot of plaintiffs; that the alleged mortgage of subject lot is null and void as it is not authorized by plaintiffs pursuant to Art. 2085 of the Civil Code which requires that the mortgagor must be the absolute owner of the mortgaged property; that as a consequence of the nullity of said mortgage, the execution foreclosing [the] mortgage is likewise null and void; that plaintiffs advised defendants to exclude subject lot from the auction sale but the latter refused. Plaintiffs likewise prayed for damages in the sum of P50,000.00.
>
> Defendant William Ong Genato filed a motion to dismiss the complaint which was opposed by the plaintiffs and denied by the Court in its Order dated February 16, 1993.
>
> Defendant Genato, then filed his answer averring that on May 19, 1989 co-defendant Oakland Development Resources Corporation mortgaged to Genato two (2) parcels of land covered by TCT Nos. 356315 and 366380 as security and guaranty for the payment of a loan in the sum of P2,000,000.00; that it appears in the complaint that the subject parcel of land is an unsubdivided portion of the aforesaid TCT No. 366380 which covers an area of 4,334 square meters more or less; that said real estate mortgage has been duly annotated at the back of TCT No. 366380 on May 22, 1989; that for non-payment of the loan of P2,000,000.00 defendant Genato filed an action for foreclosure of real estate mortgage against co-defendant corporation; that after [trial], a decision was rendered by the Regional Trial Court of Quezon City, Branch 98 against defendant corporation which decision was affirmed by the Honorable Court of Appeals; that the decision of the Court of Appeals has long become final and thus, the Regional Trial Court, Brach 98 of Quezon City issued an Order dated December 7, 1992 ordering defendant Sheriff Ernesto Sula to cause the sale at public auction of the properties covered by

> TCT No. 366380 for failure of defendant corporation to deposit in Court the money judgment within ninety (90) days from receipt of the decision of the Court of Appeals; that plaintiffs have no cause of action against defendant Genato; that the alleged plaintiffs' Contract to Sell does not appear to have been registered with the Register of Deeds of Quezon City to affect defendant Genato and the latter is thus not bound by the plaintiffs' Contract to Sell; that the registered mortgage is superior to plaintiffs' alleged Contract to Sell and it is sufficient for defendant Genato as mortgagee to know that the subject TCT No. 366380 was clean at the time of the execution of the mortgage contract with defendant corporation and defendant Genato is not bound to go beyond the title to look for flaws in the mortgagor's title; that plaintiffs' alleged Contract to Sell is neither a mutual promise to buy and sell nor a Contract of Sale. Ownership is retained by the seller, regardless of delivery and is not to pass until full payment of the price; that defendant Genato has not received any advice from plaintiffs to exclude the subject lot from the auction sale, and by way of counterclaim, defendant Genato prays for P150,000.00 moral damages and P20,000.00 for attorney's fees.
>
> On the other hand, defendant Oakland Development Resources Corporation likewise filed its answer and alleged that the complaint states no cause of action; xxx Defendant corporation also prays for attorney's fees of P20,000.00 in its counterclaim.[3]

After trial, the assisting judge[4] of the trial court rendered a decision dated August 16, 1996, the decretal portion of which provided:

> Wherefore, premises considered, judgment is hereby rendered.
>
> - Ordering defendant Oakland Dev't. Resources Corporation to pay plaintiffs:
>
> - the amount of P10,000.00 representing payment for the 'option to purchase lot';
>
> - the amount of P140,000.00 representing the first downpayment of the contract price;
>
> - the amount of P20,520.80 representing five monthly amortizations for February, March, April, May and June 1990;
>
> - the amount of P3,000.00 representing amortization for November 1990; all plus legal interest from the constitution of the mortgage up to the time the instant case was filed.
>
> - Ordering said defendant corporation to pay further to plaintiffs the sum of P30,000.00 for moral damages, P10,000.00 for exemplary damages and P20,000.00 for and as reasonable attorney's fees plus cost;
>
> - Dismissing defendant corporation's counterclaim;
>
> - Dismissing defendant Genato's counterclaim.[5]

On motion for reconsideration, the regular presiding judge set aside the judgment of the assisting judge and rendered a new one on November 27, 1996, the decretal portion of which read:

> WHEREFORE, premises considered, the Motion for Reconsideration is hereby GRANTED. The decision dated August 16, 1996 is hereby set aside and a new one entered in favor of the plaintiffs, declaring the subject mortgage and the foreclosure proceedings held thereunder as null and void insofar as they affect the superior right of the plaintiffs over the subject lot, and ordering as follows:
>
> - Defendant Oakland Development Resources to pay to plaintiffs the amount of P20,000.00 for litigation-related expenses;
>
> - Ordering defendant Sheriff Ernesto L. Sula to desist from conducting further proceedings in the extra-judicial foreclosure insofar as they affect the plaintiffs, or, in the event that title has been consolidated in the name of defendant William O. Genato, ordering said defendant to reconvey to plaintiffs the title corresponding to Lot

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> 12, Blk. 3, Phase III-A of Prater Village [Subd. II], located in Old Balara, Quezon City, containing an area of 128.75 square meters; and
>
> - Dismissing the counterclaims of defendants Oakland and Genato and with costs against them.[6]

On appeal, the Court of Appeals issued the assailed order:

> Wherefore, foregoing premises considered, the appeal having merit in fact and in law is hereby GRANTED and the decision of the Trial Court dated 27 November 1996 hereby SET ASIDE and REVERSED, and its judgment dated August 16, 1996 REINSTATED and AFFIRMED IN TOTO. No Costs.
>
> SO ORDERED.[7]

Hence, this petition.

For resolution before us now are the following issues:

(1) whether or not the registered mortgage constituted over the property was valid;

(2) whether or not the registered mortgage was superior to the contract to sell; and

(3) whether or not the mortgagee was in good faith.

Under the Art. 2085 of the Civil Code, the essential requisites of a contract of mortgage are: (a) that it be constituted to secure the fulfillment of a principal obligation; (b) that the mortgagor be the absolute owner of the thing mortgaged; and (c) that the persons constituting the mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose.

All these requirements are present in this case.

FIRST ISSUE: WAS THE REGISTERED MORTGAGE VALID?

As to the first essential requisite of a mortgage, it is undisputed that the mortgage was executed on May 15, 1989 as security for a loan obtained by Oakland from Genato.

As to the second and third requisites, we need to discuss the difference between a contract of sale and a contract to sell.

In a contract of sale, title to the property passes to the vendee upon the delivery of the thing sold; in a contract to sell, ownership is, by agreement, reserved by the vendor and is not to pass to the vendee until full payment of the purchase price.

Otherwise stated, in a contract of sale, the vendor loses ownership over the property and cannot recover it unless and until the contract is resolved or rescinded; in a contract to sell, title is retained by the vendor until full payment of the price.[8]

In the contract between petitioners and Oakland, aside from the fact that it was denominated as a contract to sell, the intention of Oakland not to transfer ownership to petitioners until full payment of the purchase price was very clear. Acts of ownership over the property were expressly withheld by Oakland from petitioner. All that was granted to them by the “occupancy permit” was the right to possess it.

Specifically, the contract between Oakland and petitioners stated:

> xxx xxx xxx
>
> 7. That the BUYER/S may be allowed to enter into and take possession of the property upon issuance of

> Occupancy Permit by the OWNER/DEVELOPER exclusively, although title has not yet passed to the BUYER/S, in which case his possession shall be that of a possessor by mere tolerance Lessee, subject to certain restrictions contained in this deed.
>
> xxx xxx xxx
>
> 13. That the BUYER/S cannot sell, mortgage, cede, transfer, assign or in any manner alienate or dispose of, in whole or in part, the rights acquired by and the obligations imposed on the BUYER/S by virtue of this contract, without the express written consent of the OWNER/DEVELOPER.
>
> xxx xxx xxx
>
> 24. That this Contract to Sell shall not in any way [authorize] the BUYER/S to occupy the assigned house and lot to them.[9]
>
> xxx xxx xxx

Clearly, when the property was mortgaged to Genato in May 1989, what was in effect between Oakland and petitioners was a contract to sell, not a contract of sale. Oakland retained absolute ownership over the property.

Ownership is the independent and general power of a person over a thing for purposes recognized by law and within the limits established thereby.[10] According to Art. 428 of the Civil Code, this means that:

> The owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.
>
> xxx xxx xxx

Aside from the jus utendi and the jus abutendi [11] inherent in the right to enjoy the thing, the right to dispose, or the jus disponendi, is the power of the owner to alienate, encumber, transform and even destroy the thing owned.[12]

Because Oakland retained all the foregoing rights as owner of the property, it was entitled absolutely to mortgage it to Genato. Hence, the mortgage was valid.

SECOND ISSUE: WAS THE REGISTERED MORTGAGE SUPERIOR TO THE CONTRACT TO SELL?

In their memorandum, petitioners cite our ruling in State Investment House, Inc. v. Court of Appeals [13] to the effect that an unregistered sale is preferred over a registered mortgage over the same property. The citation is misplaced.

This Court in that case explained the rationale behind the rule:

> The unrecorded sale between respondents-spouses and SOLID is preferred for the reason that if the original owner xxx had parted with his ownership of the thing sold then he no longer had ownership and free disposal of that thing as to be able to mortgage it again.

State Investment House is completely inapplicable to the case at bar. A contract of sale and a contract to sell are worlds apart. State Investment House clearly pertained to a contract of sale, not to a contract to sell which was what Oakland and petitioners had. In State Investment House, ownership had passed completely to the buyers and therefore, the former owner no longer had any legal right to mortgage the property, notwithstanding the fact that the new owner-buyers had not registered the sale. In the case before us, Oakland retained absolute ownership over the property under the contract to sell and therefore had every right to mortgage it.

In sum, we rule that Genato’s registered mortgage was superior to petitioner’s contract to sell, subject to any

liabilities Oakland may have incurred in favor of petitioners by irresponsibly mortgaging the property to Genato despite its commitments to petitioners under their contract to sell.

THIRD ISSUE: WAS THE MORTGAGE IN GOOD FAITH?

The third issue involves a factual matter which should not be raised in this petition. Only questions of law may be raised in a Rule 45 petition. This Court is not a trier of facts. The resolution of factual issues is the function of the lower courts. We therefore adopt the factual findings of the Court of Appeals and uphold the good faith of the mortgagee Genato.

RELIANCE ON WHAT APPEARS IN THE TITLE

Just as an innocent purchaser for value may rightfully rely on what appears in the certificate of title, a mortgagee has the right to rely on what appears in the title presented to him. In the absence of anything to arouse suspicion, he is under no obligation to look beyond the certificate and investigate the title of the mortgagor appearing on the face of the said certificate. [14]

We agree with the findings and conclusions of the trial court regarding the liabilities of Oakland in its August 16, 1996 decision, as affirmed by the Court of Appeals:

> Anent [plaintiffs'] prayer for damages, the Court finds that defendant corporation is liable to return to plaintiffs all the installments/payments made by plaintiffs consisting of the amount of P10,000.00 representing payment for the 'option to purchase lot'; the amount of P140,000.00 which was the first downpayment; the sum of P20,520.80 representing five monthly amortizations for February, March, April, May and June 1990 and the amount of P3,000.00 representing amortization for November 1990 plus legal interest from the time of the mortgage up to the time this instant case was filed. Further, considering that defendant corporation wantonly and fraudulently mortgaged the subject property without regard to [plaintiffs'] rights over the same, said defendant should pay plaintiffs moral damages in the reasonable amount of P30,000.00. xxx Furthermore, since defendant [corporation's] acts have compelled the plaintiffs to litigate and incur expenses to protect their interest, it should likewise be adjudged to pay plaintiffs attorney's fees of P20,000.00 under Article 2208 paragraph two (2) of the Civil Code.[15]

WHEREFORE, the petition for review is hereby DENIED. The decision of the Court of Appeals reinstating the August 16, 1996 decision of the trial court is hereby AFFIRMED.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Carpio-Morales and Garcia, JJ., concur.

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[1] Penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Salvador J. Valdez, Jr. and Eliezer R. de los Santos, Special Seventh Division.

[2] Regional Trial Court, Branch 81, Quezon City.

[3] CA Rollo, Annex "A," pp. 27-30.

[4] Judge Ignacio M. Capulong.

[5] CA Rollo, Annex "A," pp. 37-38.

[6] CA Rollo, Annex "B," pp. 43-44.

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[7] Rollo, p. 21.

[8] Salazar v. Court of Appeals, 327 Phil. 944 (1996).

[9] CA Rollo, p. 33.

[10] Commentaries and Jurisprudence on the Civil Code of the Philippines, Volume II, Tolentino, p. 45.

[11] Jus utendi is the right to receive from the thing what it produces. Jus abutendi is the right to consume the thing by its use.

[12] Commentaries and Jurisprudence on the Civil Code of the Philippines, Volume II, Tolentino p. 45-46.

[13] 324 Phil. 642 (1996).

[14] Cabuhat v. Court of Appeals, 418 Phil. 451 (2001).

[15] CA Decision, Rollo, p. 21.

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