

LUCRATIVE REALTY AND DEVELOPMENT CORPORATION, PETITIONER, VS. RICARDO C. BERNABE JR., RESPONDENT.

G.R. No. 148514. November 26, 2002

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This petition for certiorari assails the Decision of 23 October 2000[1] of the Court of Appeals as well as its Resolution of 31 May 2001[2] rejecting the imputation of grave abuse of discretion on the part of Judge Vicente A. Hidalgo in denying the demurrer to evidence of petitioner Lucrative Realty and Development Corporation (LUCRATIVE REALTY) and its motion to inhibit him for the reason that his actuaciones were within the limits of his discretion.

On 28 May 1961 spouses Ambrocio and Lourdes Baal entered into a contract of lease with Fil Oil Refinery Corporation (FILOIL) whereby the firm leased from the couple a parcel of land located at corner Agno Street and Quirino Avenue, Malate, Manila, with an area of 1,762.50 square meters for a period of ten (10) years renewable for another five (5) years at the option of the lessee. After the execution of the contract FILOIL immediately constructed a gasoline station on the leased premises.

Sometime in 1969 respondent Ricardo Bernabe Jr. acquired the right to manage and operate the gasoline station. Some years later the assets of FILOIL, including the Malate gasoline station being operated by respondent, were taken over by Petron Corporation (PETRON). Respondent Bernabe Jr. however was allowed to continue with its operation.

On 28 November 1977 the Baal spouses obtained a loan of P750,000.00 from the Home Savings Bank and Trust Company (HOME SAVINGS) and as security therefor executed a real estate mortgage over two (2) of their properties, a parcel of land located in Caloocan, and the Malate property subject of this controversy.

A year later the spouses were granted by HOME SAVINGS an additional credit of P135,000.00 for which the deed of real estate mortgage the spouses earlier executed was amended to increase the secured loan obligation to P885,000.00.

In August 1980, with the expiration of the 1961 lease contract, the Baal spouses entered a new contract of lease with respondent Bernabe Jr. for a period of ten (10) years and granting respondent explicitly the right of first refusal in the event the leased property would be sold.

Sometime in 1989 the obligation of the spouses with the bank became overdue. HOME SAVINGS was thus constrained to extrajudicially foreclose the mortgage on the Caloocan and Malate properties and a public auction was scheduled for their disposition. As sole bidder HOME SAVINGS was awarded the ownership of the properties and a certificate of sale was issued in its favor.

Meanwhile, in an effort to prevent the foreclosure of the mortgaged properties, the Baal spouses instituted an action to enjoin the scheduled auction sale. When the case was being tried the parties entered into a compromise

agreement whereby HOME SAVINGS agreed to accept the Malate property as full satisfaction of the spouses' obligation; accordingly, the Caloocan property was released from the mortgage. Pursuant further to their compromise agreement, the Baals executed on 29 December 1989 a dacion en pago transferring ownership of the Malate property to HOME SAVINGS. On the very same day, HOME SAVINGS acquired the property it sold the same to petitioner LUCRATIVE REALTY.

Sometime in January 1990 HOME SAVINGS wrote respondent Bernabe Jr. telling him to pay henceforth his leased rentals directly to the bank. Believing that HOME SAVINGS had already foreclosed the mortgage, respondent Bernabe invoked his right of first refusal to purchase the Malate property. On 7 March 1990 HOME SAVINGS denied the offer of respondent to exercise his right of first refusal claiming that it acquired the property from the Baal spouses through dacion en pago and not through sale. A year later, or on 1 May 1991, HOME SAVINGS wrote respondent to vacate the property as his lease would not be renewed.

Aggrieved, respondent filed a complaint for annulment of sale with prayer for the issuance of a writ of preliminary injunction against petitioner LUCRATIVE REALTY, HOME SAVINGS and Lourdes Baal.[3] In his complaint, respondent alleged that even before HOME SAVINGS foreclosed the mortgage on the Malate property, he had already notified the bank of his right of first refusal as well as his intention to redeem it. He attributed bad faith on the part of LUCRATIVE REALTY, HOME SAVINGS and the spouses Baal in hastening the transfer of the property in favor of petitioner to deny him his right to purchase the leased premises. In support of his complaint respondent emphasized that even after selling the Malate property in favor of petitioner LUCRATIVE REALTY, HOME SAVINGS in palpable bad faith continued to represent itself as owner of the property.

After the complaint was filed, the trial court conducted hearings to determine the propriety of the issuance of the writ of preliminary injunction prayed for by respondent. The parties were required to submit their memoranda in support of their respective positions. While respondent invoked his right of first refusal to purchase the contested property, petitioner LUCRATIVE REALTY insisted that respondent's "so-called preferential right" did not constitute a valid and binding contract because it was not supported by a consideration.

After the parties were heard on the matter of the issuance of a writ of preliminary injunction, the trial court ruled that the application for injunctive relief would be resolved after the presentation of respondent's evidence in chief.

Meanwhile, on 24 February 1992 petitioner LUCRATIVE REALTY instituted an ejectment suit in the Metropolitan Trial Court of Manila against respondent Bernabe Jr. After trial, judgment was rendered ordering respondent to vacate the contested property.[4] Respondent appealed to the Regional Trial Court which rendered a contrary opinion and found him entitled to the possession of the disputed property.[5] Consequently, petitioner elevated his case to the Court of Appeals.

On 20 February 1995 the trial court hearing the complaint for annulment of sale issued the writ of preliminary injunction in favor of respondent.[6] Upon receipt of the order HOME SAVINGS immediately moved for its modification on the ground that since it already sold the property to LUCRATIVE REALTY it was no longer in a position to comply with the writ. Thus the order was modified to limit the application of the writ to petitioner LUCRATIVE REALTY only.

After Lourdes Baal had concluded with the presentation of her evidence and while the petition for review in the ejectment case was pending before the Court of Appeals, petitioner LUCRATIVE REALTY filed a Motion to Dismiss/Demurrer to Evidence and to Lift Injunction before the trial court.

On 30 May 1996 the Court of Appeals granted petitioner's plea for a reversal of the decision in the ejectment case

and ordered that respondent Bernabe Jr. be evicted from the premises. Consequently, respondent appealed to the Supreme Court.

While petitioner prevailed in its ejectment suit before the Court of Appeals, its Motion to Dismiss/Demurrer to Evidence and to Lift Injunction was however denied by the trial court. Petitioner timely moved for reconsideration.

Meanwhile, in a Resolution dated 15 January 1997 the Supreme Court dismissed Bernabe's appeal in the ejectment suit. Upon receipt of the aforesaid resolution, petitioner immediately filed an Omnibus Motion before the trial court asking Judge Vicente A. Hidalgo to inhibit himself and to immediately resolve its Motion for Reconsideration.

Two (2) years and a half later, or on 8 September 1999, Judge Hidalgo finally issued an Order denying petitioner's Omnibus Motion. Petitioner went to the Court of Appeals on certiorari attributing grave abuse of discretion on the part of the trial court judge for not lifting the writ of injunction and for refusing to recuse himself from the case.

In its petition before the Court of Appeals, LUCRATIVE REALTY argued that it was error for the trial court to have issued the questioned writ of preliminary injunction and charged Judge Hidalgo with "unmistakable partiality" when the latter purportedly refused to act on several of its motions with dispatch.

In dismissing the petition, the Court of Appeals ruled that petitioner was already barred by laches when it questioned the propriety of the issuance of the writ. According to the appellate court, while petitioner received the trial court's Order granting respondent's prayer for the issuance of a writ of injunction on 4 March 1995, it was only on 12 June 1995 that it moved for its lifting. Again, after the denial of its motion, it took petitioner another five (5) months to move for reconsideration. Still later, upon the denial of its motion for reconsideration, it took petitioner another ten (10) months to question through certiorari proceedings the reasonableness of the trial court's Order. Such belated action, according to the appellate court, constituted laches warranting a presumption that petitioner abandoned its right or declined to assert it. Further, the Court of Appeals held that there was insufficient evidence to support the conclusion that Judge Hidalgo gravely abused his discretion when he denied petitioner's motion to dismiss the annulment suit and to inhibit himself from hearing the case.

To this judgment of the Court of Appeals, petitioner excepts alleging that it was error for the appellate court to have affirmed the trial court's denial of its Motion to Dismiss/Demurrer to Evidence and to Lift Injunction despite the existence of well-established grounds in support thereof. Petitioner further argues that under Art. 1479 of the Civil Code an accepted unilateral promise to buy or to sell a determinate thing which is not supported by a consideration distinct from the price does not produce a binding contract. According to petitioner, respondent Bernabe Jr. himself has admitted that his preferential right to purchase the disputed property is not supported by consideration separate from the rent regularly paid for the leased premises; as such he cannot claim any cause of action as against petitioner, as well as its co-defendants, thereby justifying the dismissal of the complaint.

We do not agree. In *Equatorial Realty Development, Inc., v. Mayfair Theater, Inc.*,^[7] we categorically ruled that it is not correct to say that there is no consideration for the grant of the right of first refusal if such grant is embodied in the same contract of lease. Since the stipulation forms part of the entire lease contract, the consideration for the lease includes the consideration for the grant of the right of first refusal. In entering into the contract, the lessee is in effect stating that it consents to lease the premises and to pay the price agreed upon provided the lessor also consents that, should it sell the leased property, then, the lessee shall be given the right to match the offered purchase price and to buy the property at that price.

In light of the foregoing, we affirm the finding of the Court of Appeals that there is no ground to impute grave

abuse of discretion on the part of Judge Hidalgo for denying petitioner's demurrer to evidence. Respondent Bernabe's testimony that apart from his rental payment he gave no other consideration for the grant of the right did not defeat his cause of action as against petitioner. For, as mentioned earlier, rent paid by the lessee constitutes sufficient consideration for the grant of a right of first refusal aside from the fact that such right is stipulated in the same contract of lease.

Nor can we indulge in the unfounded assumptions of partiality and prejudgment hurled by petitioner LUCRATIVE REALTY against Judge Hidalgo. It ill behooves us to hold a judge as biased or prejudiced simply because he took time in resolving a motion for resolution. Prejudice and partiality are not to be presumed especially if weighed against a judge's legal obligation to administer justice "without respect to person and do equal right to the poor and the rich." [8]

Lastly, the Court of Appeals disallowed the petition for certiorari taken by petitioner for the reason that it was filed beyond the sixty (60)-day period prescribed under Sec. 4, Rule 65 of the Rules of Court. The appellate court stressed that while the Order granting the writ of preliminary injunction was issued by the trial court on 20 February 1995 and the motion for the lifting of the writ was denied on 5 June 1996 it was only on 16 November 1999, or well beyond the sixty (60)-day reglementary period, when petitioner questioned the propriety of its issuance. It is of course beyond question that the lapse of the mandated period deprives an appellate court of jurisdiction to alter an otherwise final order rendered by a lower court. There is then every reason to uphold the Decision of the Court of Appeals denying the petition for certiorari.

WHEREFORE, finding no reversible error in the Decision sought to be reviewed, the instant petition is DENIED.

SO ORDERED.

Mendoza, Quisumbing, and Callejo, Sr., JJ., concur.

Austria-Martinez, J., no part being a party to CA Decision.

[1] Decision penned by Associate Justice Mercedes Gozo-Dadole, concurred in by Associate Justices Ma. Alicia Austria-Martinez (now Associate Justice of this Court) and Hilarion L. Aquino (now retired); Rollo, pp. 37-51.

[2] Id., p. 52.

[3] Docketed as Civil Case No. 91-58227.

[4] Decision penned by Judge Antonio I. De Castro, MeTC-Br. 29, Manila.

[5] Decision penned by Judge Rosmari D. Carandang, RTC-Br. 12, Manila.

[6] Order for issuance of writ of preliminary injunction issued by Judge Vicente A. Hidalgo, RTC-Br. 37, Manila.

[7] 332 Phil. 525 (1996).

[8] Sec. 3, Judiciary Act of 1948.

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