

ATTY. PEDRO M. FERRER, PETITIONER, VS. SPOUSES ALFREDO DIAZ AND IMELDA DIAZ, AND REINA COMANDANTE AND SPOUSES BIENVENIDO PANGAN AND ELIZABETH PANGAN, RESPONDENTS.

G.R. No. 165300. April 23, 2010

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

The basic questions to be resolved in this case are: Is a waiver of hereditary rights in favor of another executed by a future heir while the parents are still living valid? Is an adverse claim annotated on the title of a property on the basis of such waiver likewise valid and effective as to bind the subsequent owners and hold them liable to the claimant?

This Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court assails the December 12, 2003 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 70888.[3] Said Decision modified the June 14, 2001 Summary Judgment[4] of the Regional Trial Court (RTC) of Quezon City in Civil Case No. Q-99-38876 by holding respondents Spouses Bienvenido and Elizabeth Pangan (the Pangans) not solidarily liable with the other respondents, Spouses Alfredo and Imelda Diaz (the Diazes) and Reina Comandante (Comandante), to petitioner Atty. Pedro M. Ferrer (Atty. Ferrer). Likewise assailed is the CA Resolution[5] dated September 10, 2004 which denied petitioner's as well as respondents Spouses Diaz and Comandante's respective motions for reconsideration.

The parties' respective versions of the factual antecedents are as follows:

Version of the Petitioner

Petitioner Atty. Ferrer claimed in his original Complaint[6] that on May 7, 1999, the Diazes, as represented by their daughter Comandante, through a Special Power of Attorney (SPA),[7] obtained from him a loan of P1,118,228.00. The loan was secured by a Real Estate Mortgage Contract[8] by way of second mortgage over Transfer Certificate of Title (TCT) No. RT-6604[9] and a Promissory Note[10] payable within six months or up to November 7, 1999. Comandante also issued to petitioner postdated checks to secure payment of said loan.

Petitioner further claimed that prior to this or on May 29, 1998, Comandante, for a valuable consideration of P600,000.00, which amount formed part of the abovementioned secured loan, executed in his favor an instrument entitled Waiver of Hereditary Rights and Interests Over a Real Property (Still Undivided),[11] the pertinent portions of which read:

I, REINA D. COMANDANTE, of legal age, Filipino, married, with residence and postal address at No. 6, Road 20, Project 8, Quezon City, Metro Manila, Philippines, for a valuable consideration of SIX HUNDRED THOUSAND PESOS (P600,000.00) which constitutes my legal obligation/loan to Pedro M. Ferrer, likewise of legal age, Filipino, married to Erlinda B. Ferrer, with residence and postal address at No. 9, Lot 4, Puerto Rico Street, Loyola Grand Villas, Quezon City, Metro Manila, Philippines, by virtue of these presents, do hereby WAIVE, and/or REPUDIATE all my hereditary rights and interests as a legitimate heir/daughter of Sps. Alfredo T. Diaz and Imelda G. Diaz in favor of said Pedro M. Ferrer, his heirs and assigns over a certain parcel

of land together with all the improvements found thereon and which property is more particularly described as follows:

TRANSFER CERTIFICATE OF TITLE
NO. RT-6604 (82020) PR-18887

x x x x

and which property is titled and registered in the name of my parents Alfredo T. Diaz and Imelda G. Diaz, as evidenced by Transfer Certificate of Title No. RT 6604 (82020) PR-18887.

(sgd.)
REINA D. COMANDANTE
Affiant

On the basis of said waiver, petitioner executed an Affidavit of Adverse Claim[12] which he caused to be annotated at the back of TCT No. RT-6604 on May 26, 1999.

The Diazes, however, reneged on their obligation as the checks issued by Comandante were dishonored upon presentment. Despite repeated demands, said respondents still failed and refused to settle the loan. Thus, petitioner filed on September 29, 1999 a Complaint[13] for Collection of Sum of Money Secured by Real Estate Mortgage Contract against the Diazes and Comandante docketed as Civil Case No. Q-99-38876 and raffled to Branch 224 of RTC, Quezon City.

Petitioner twice amended his complaint. First, by including as an alternative relief the Judicial Foreclosure of Mortgage[14] and, second, by impleading as additional defendants the Pangans as the mortgaged property covered by TCT No. RT-6604 was already transferred under their names in TCT No. N-209049. Petitioner prayed in his second amended complaint that all the respondents be ordered to jointly and solidarily pay him the sum of P1,118,228.00, exclusive of interests, and/or for the judicial foreclosure of the property pursuant to the Real Estate Mortgage Contract.

Version of the Respondents

In her Answer[15] to petitioner's original complaint, Comandante alleged that petitioner and his wife were her fellow members in the Couples for Christ Movement. Sometime in 1998, she sought the help of petitioner with regard to the mortgage with a bank of her parents' lot located at No. 6, Rd. 20, Project 8, Quezon City and covered by TCT No. RT-6604. She also sought financial accommodations from the couple on several occasions which totaled P500,000.00. Comandante, however, claimed that these loans were secured by chattel mortgages over her taxi units in addition to several postdated checks she issued in favor of petitioner.

As she could not practically comply with her obligation, petitioner and his wife, presented to Comandante sometime in May 1998 a document denominated as Waiver of Hereditary Rights and Interests Over a Real Property (Still Undivided) pertaining to a waiver of her hereditary share over her parents' abovementioned property. Purportedly, the execution of said waiver was to secure Comandante's loan with the couple which at that time had already ballooned to P600,000.00 due to interests.

A year later, the couple again required Comandante to sign the following documents: (1) a Real Estate Mortgage Contract over her parents' property; and, (2) an undated Promissory Note, both corresponding to the amount of P1,118,228.00, which petitioner claimed to be the total amount of Comandante's monetary obligation to him exclusive of charges and interests. Comandante alleged that she reminded petitioner that she was not the registered owner of the subject property and that although her parents granted her SPA, same only pertains to her authority to mortgage the property to banks and other financial institutions and not to individuals. Petitioner

nonetheless assured Comandante that the SPA was also applicable to their transaction. As Comandante was still hesitant, petitioner and his wife threatened to foreclose the former's taxi units and present the postdated checks she issued to the bank for payment. For fear of losing her taxi units which were the only source of her livelihood, Comandante was thus constrained to sign the mortgage agreement as well as the promissory note. Petitioner, however, did not furnish her with copies of said documents on the pretext that they still have to be notarized, but, as can be gleaned from the records, the documents were never notarized. Moreover, Comandante claimed that the SPA alluded to by petitioner in his complaint was not the same SPA under which she thought she derived the authority to execute the mortgage contract.

Comandante likewise alleged that on September 29, 1999 at 10:00 o'clock in the morning, she executed an Affidavit of Repudiation/Revocation of Waiver of Hereditary Rights and Interests Over A (Still Undivided) Real Property,[16] which she caused to be annotated on the title of the subject property with the Registry of Deeds of Quezon City on the same day. Interestingly, petitioner filed his complaint later that day too.

By way of special and affirmative defenses, Comandante asserted in her Answer to the amended complaint[17] that said complaint states no cause of action against her because the Real Estate Mortgage Contract and the waiver referred to by petitioner in his complaint were not duly, knowingly and validly executed by her; that the Waiver of Hereditary Rights and Interests Over a Real Property (Still Undivided) is a useless document as its execution is prohibited by Article 1347 of the Civil Code,[18] hence, it cannot be the source of any right or obligation in petitioner's favor; that the Real Estate Mortgage was of doubtful validity as she executed the same without valid authority from her parents; and, that the prayer for collection and/or judicial foreclosure was irregular as petitioner cannot seek said remedies at the same time.

Apart from executing the affidavit of repudiation, Comandante also filed on October 4, 1999 a Petition for Cancellation of Adverse Claim (P.E. 2468) Under The Memorandum of Encumbrances of TCT No. RT-6604 (82020) PR-18887[19] docketed as LRC Case No. Q-12009 (99) and raffled to Branch 220 of RTC, Quezon City. Petitioner who was impleaded as respondent therein moved for the consolidation of said case[20] with Civil Case No. Q-99-38876. On June 24, 2000, Branch 220 of RTC, Quezon City ordered the consolidation of LRC Case No. Q-12009 (99) with Civil Case No. Q-99-38876. Accordingly, the records of the former case was forwarded to Branch 224.

For their part, the Diazes asserted that petitioner has no cause of action against them. They claimed that they do not even know petitioner and that they did not execute any SPA in favor of Comandante authorizing her to mortgage for the second time the subject property. They also contested the due execution of the SPA as it was neither authenticated before the Philippine Consulate in the United States nor notarized before a notary public in the State of New York where the Diazes have been residing for 16 years. They claimed that they do not owe petitioner anything. The Diazes also pointed out that the complaint merely refers to Comandante's personal obligation to petitioner with which they had nothing to do. They thus prayed that the complaint against them be dismissed.[21]

At the Pangans' end, they alleged that they acquired the subject property by purchase in good faith and for a consideration of P3,000,000.00 on November 11, 1999 from the Diazes through the latter's daughter Comandante who was clothed with SPA acknowledged before the Consul of New York. The Pangans immediately took actual possession of the property without anyone complaining or protesting. Soon thereafter, they were issued TCT No. N-209049 in lieu of TCT No. RT-6604 which was cancelled. [22]

However, on December 21, 1999, they were surprised upon being informed by petitioner that the subject land had been mortgaged to him by the Diazes. Upon inquiry from Comandante, the latter readily admitted that she has a

personal loan with petitioner for which the mortgage of the property in petitioner's favor was executed. She admitted, though, that her parents were not aware of such mortgage and that they did not authorize her to enter into such contract. Comandante also informed the Pangans that the signatures of her parents appearing on the SPA are fictitious and that it was petitioner who prepared such document.

As affirmative defense, the Pangans asserted that the annotation of petitioner's adverse claim on TCT No. RT-6604 cannot impair their rights as new owners of the subject property. They claimed that the Waiver of Hereditary Rights and Interests Over a Real Property (Still Undivided) upon which petitioner's adverse claim is anchored cannot be the source of any right or interest over the property considering that it is null and void under paragraph 2 of Article 1347 of the Civil Code.

Moreover, the Pangans asserted that the Real Estate Mortgage Contract cannot bind them nor in any way impair their ownership of subject property because it was not registered before the Register of Deeds.[23]

All the respondents interposed their respective counterclaims and prayed for moral and exemplary damages and attorney's fees in varying amounts.

After the parties have submitted their respective pre-trial briefs, the Diazes filed on March 29, 2001 a Motion for Summary Judgment[24] alleging that: first, since the documents alluded to by petitioner in his complaint were defective, he was not entitled to any legal right or relief; and, second, it was clear from the pleadings that it is Comandante who has an outstanding obligation with petitioner which the latter never denied. With these, the Diazes believed that there is no genuine issue as to any material fact against them and, hence, they were entitled to summary judgment.

On May 7, 2001, petitioner also filed a Motion for Summary Judgment,[25] claiming that his suit against the respondents is meritorious and well-founded and that same is documented and supported by law and jurisprudence. He averred that his adverse claim annotated at the back of TCT No. RT-6604, which was carried over in TCT No. 209049 under the names of the Pangans, is not merely anchored on the Waiver of Hereditary Rights and Interests Over a Real Property (Still Undivided) executed by Comandante, but also on the Real Estate Mortgage likewise executed by her in representation of her parents and in favor of petitioner. Petitioner insisted that said adverse claim is not frivolous and invalid and is registrable under Section 70 of Presidential Decree (PD) No. 1529. In fact, the Registrar of Deeds of Quezon City had already determined the sufficiency and/or validity of such registration by annotating said claim, and this, respondents failed to question. Petitioner further averred that even before the sale and transfer to the Pangans of the subject property, the latter were already aware of the existence of his adverse claim. In view of these, petitioner prayed that his Motion for Summary Judgment be granted.

Ruling of the Regional Trial Court

After the filing of the parties' respective Oppositions to the said motions for summary judgment, the trial court, in an Order dated May 31, 2001,[26] deemed both motions for summary judgment submitted for resolution. Quoting substantially petitioner's allegations in his Motion for Summary Judgment, it thereafter rendered on June 14, 2001 a Summary Judgment[27] in favor of petitioner, the dispositive portion of which reads:

WHEREFORE, premises considered, summary judgment is hereby rendered in favor of plaintiff and against defendants by:

a) ORDERING all defendants jointly and solidarily to pay plaintiff the sum of ONE MILLION ONE HUNDRED EIGHTEEN THOUSAND TWO HUNDRED TWENTY EIGHT PESOS (P1,118,228.00) which is blood money of plaintiff;

b) ORDERING the Honorable Registrar of Deeds of Quezon City that the rights and interest of the plaintiff over subject property be annotated at the back of T.C.T. No. N-209049;

c) SENTENCING all defendants to pay plaintiff's expenses of TEN THOUSAND PESOS (P10,000.00) and to pay the costs of suit.

IT IS SO ORDERED.[28]

The Pangans, the Diazes, and Comandante appealed to the CA.[29] The Pangans faulted the trial court in holding them jointly and severally liable with the Diazes and Comandante for the satisfaction of the latter's personal obligation to petitioner in the total amount of P1,118,228.00. The Diazes and Comandante, on the other hand, imputed error upon the trial court in rendering summary judgment in favor of petitioner. They averred that assuming the summary judgment was proper, the trial court should not have considered the Real Estate Mortgage Contract and the Promissory Note as they were defective, as well as petitioner's frivolous and non-registrable adverse claim.

In its Decision[30] dated December 12, 2003, the CA declared Comandante's waiver of hereditary rights null and void. However, it found the Real Estate Mortgage executed by Comandante on behalf of her parents as binding between the parties thereto.

As regards the Pangans, the CA ruled that the mortgage contract was not binding upon them as they were purchasers in good faith and for value. The property was free from the mortgage encumbrance of petitioner when they acquired it as they only came to know of the adverse claim through petitioner's phone call which came right after the former's acquisition of the property. The CA further ruled that as Comandante's waiver of hereditary rights and interests upon which petitioner's adverse claim was based is a nullity, it could not be a source of any right in his favor. Hence, the Pangans were not bound to take notice of such claim and are thus not liable to petitioner.

Noticeably, the appellate court did not rule on the propriety of the issuance of the Summary Judgment as raised by the Diazes and Comandante. In the ultimate, the CA merely modified the assailed Summary Judgment of the trial court by excluding the Pangans among those solidarily liable to petitioner, in effect affirming in all other respects the assailed summary judgment, viz:

WHEREFORE, foregoing premises considered, the Decision of the Regional Trial Court of Quezon City, Branch 224 in Civil Case No. Q-99-38876 is hereby MODIFIED, as follows:

1. Ordering defendants-appellants Comandante and Spouses Diaz to jointly and severally pay plaintiff the sum of Php 1,118, 228.00; and
2. Ordering defendants-appellants Comandante and Spouses Diaz to jointly and severally pay plaintiff the amount of Php10,000.00 plus cost of suit.

SO ORDERED.[31]

Petitioner's Motion for Reconsideration[32] having been denied by the CA in its Resolution[33] dated September 10, 2004, he now comes to us through this petition for review on certiorari insisting that the Pangans should, together with the other respondents, be held solidarily liable to him for the amount of P1,118,228.00.

Our Ruling

The petition lacks merit.

Petitioner merely reiterates his contentions in the Motion for Summary Judgment he filed before the trial court.

He insists that his Adverse Claim annotated at the back of TCT No. RT-6604 is not merely anchored on Comandante's Waiver of Hereditary Rights and Interests Over A Real Property (Still Undivided) but also on her being the attorney-in-fact of the Diazes when she executed the mortgage contract in favor of petitioner. He avers that his adverse claim is not frivolous or invalid and is registrable as the Registrar of Deeds of Quezon City even allowed its annotation. He also claims that even prior to the sale of subject property to the Pangans, the latter already knew of his valid and existing adverse claim thereon and are, therefore, not purchasers in good faith. Thus, petitioner maintains that the Pangans should be held, together with the Diazes and Comandante, jointly and severally liable to him in the total amount of P1,118,228.00.

Petitioner's contentions are untenable.

The Affidavit of Adverse Claim executed by petitioner reads in part:

x x x x

1. That I am the Recipient/Benefactor of compulsory heir's share over an undivided certain parcel of land together with all the improvements found therein x x x as evidenced by Waiver of Hereditary Rights and Interests Over A Real Property, executed by REINA D. COMANDANTE (a compulsory/legitimate heir of Sps. Alfredo T. Diaz and Imelda G. Diaz), x x x.
2. That in order to protect my interest over said property as a Recipient/Benefactor, for the registered owners/parents might dispose (of) and/or encumber the same in a fraudulent manner without my knowledge and consent, for the owner's duplicate title was not surrendered to me, it is petitioned that this Affidavit of Adverse Claim be ANNOTATED at the back of the said title particularly on the original copy of Transfer Certificate of Title No. RT-6604 (82020) PR-18887 which is on file with the Register of Deeds of Quezon City.
3. That I am executing this Affidavit in order to attest (to) the truth of the foregoing facts and to petition the Honorable Registrar of Deeds, Quezon City, to annotate this Affidavit of Adverse Claim at the back of the said title particularly the original copy of Transfer Certificate of Title No. RT-6604 (82020) PR-18887 which is on file with the said office, so that my interest as Recipient/Benefactor of the said property will be protected especially the registered owner/parents, in a fraudulent manner might dispose (of) and/or encumber the same without my knowledge and consent. (Emphasis ours)

Clearly, petitioner's Affidavit of Adverse Claim was based solely on the waiver of hereditary interest executed by Comandante. This fact cannot be any clearer especially so when the inscription of his adverse claim at the back of TCT No. RT-6604 reads as follows:

P.E. 2468/T-(82020)RT-6604 - - AFFIDAVIT OF ADVERSE CLAIM - - Executed under oath by PEDRO M. FERRER, married to Erlinda B. Ferrer, claiming among others that they have a claim, the interest over said property as Recipient/Benefactor, by virtue of a waiver of Hereditary Rights and Interest over a real property x x x[34] (Emphasis ours)

Therefore, there is no basis for petitioner's assertion that the adverse claim was also anchored on the mortgage contract allegedly executed by Comandante on behalf of her parents.

The questions next to be resolved are: Is Comandante's waiver of hereditary rights valid? Is petitioner's adverse claim based on such waiver likewise valid and effective?

We note at the outset that the validity of petitioner's adverse claim should have been determined by the trial court after the petition for cancellation of petitioner's adverse claim filed by Comandante was consolidated with Civil Case No. Q-99-38876.[35] This is in consonance with Section 70 of PD 1529 which provides:

Section 70. Adverse Claim. -- Whoever claims any part or interest in registered land adverse to the registered owner, arising subsequent to the date of the original registration, may, if no other provision is made in this Decree for registering the same, make a statement in writing setting forth fully his alleged right or interest, and how or under whom acquired, a reference to the number of the certificate of title of the registered owner, the name of the registered owner, and a description of the land in which the right or interest is claimed.

The statement shall be signed and sworn to, and shall state the adverse claimant's residence, and a place at which all notices may be served upon him. This statement shall be entitled to registration as an adverse claim on the certificate of title. The adverse claim shall be effective for a period of thirty days from the date of registration. After the lapse of said period, the annotation of adverse claim may be cancelled upon filing of a verified petition therefor by the party in interest: Provided, however, That after cancellation, no second adverse claim based on the same ground shall be registered by the same claimant.

Before the lapse of thirty days aforesaid, any party in interest may file a petition in the Court of First Instance where the land is situated for the cancellation of the adverse claim, and the court shall grant a speedy hearing upon the question of validity of such adverse claim, and shall render judgment as may be just and equitable. If the adverse claim is adjudged to be invalid, the registration thereof shall be ordered cancelled. If, in any case, the court, after notice and hearing, shall find that the adverse claim thus registered was frivolous, it may fine the claimant in an amount not less than one thousand pesos nor more than five thousand pesos, in its discretion. Before the lapse of thirty days, the claimant may withdraw his adverse claim by filing with the Register of Deeds a sworn petition to that effect. (Emphasis ours)

Pursuant to the third paragraph of the afore-quoted provision, it has been held that the validity or efficaciousness of an adverse claim may only be determined by the Court upon petition by an interested party, in which event, the Court shall order the immediate hearing thereof and make the proper adjudication as justice and equity may warrant. And, it is only when such claim is found unmeritorious that the registration of the adverse claim may be cancelled.[36]

As correctly pointed out by respondents, the records is bereft of any showing that the trial court conducted any hearing on the matter. Instead, what the trial court did was to include this material issue among those for which it has rendered its summary judgment as shown by the following portion of the judgment:

x x x it will be NOTED that subject Adverse Claim annotated at the back of Transfer Certificate of Title No. RT-6604 (82020) PR-18887, and carried over to defendants-Sps. Pangan's Title No. N-20909, is not merely anchored on defendant Reina Comandante's "Waiver of Hereditary Rights and Interest Over a Real Property" but also on her being the Attorney-In-Fact of the previous registered owners/parents/defendants Sps. Alfredo and Imelda Diaz about the Real Estate Mortgage Contract for a loan of P1,118,228.00 which is a blood money of the plaintiff. Moreover, subject Adverse Claim in LRC Case No. Q-12009 (99) is NOT frivolous and invalid and consequently, REGISTRABLE by virtue of Section 110 of the Land Registration Act (now Section 70 of Presidential Decree No. 1529). [37] (Emphasis ours)

It does not escape our attention that the trial court merely echoed the claim of petitioner that his adverse claim subject of LRC Case No. Q-12009 (99) is not frivolous, invalid and is consequently registrable. We likewise lament the apparent lack of effort on the part of said court to make even a short ratiocination as to how it came up with said conclusion. In fact, what followed the above-quoted portion of the summary judgment are mere recitals of the arguments raised by petitioner in his motion for summary judgment. And in the dispositive portion, the trial court merely casually ordered that petitioner's adverse claim be inscribed at the back of the title of the Pangans. What is worse is that despite this glaring defect, the CA manifestly overlooked the matter even if respondents vigorously raised the same before it.

Be that as it may, respondents' efforts of pointing out this flaw, which we find significant, have not gone to naught

as will be hereinafter discussed.

All the respondents contend that the Waiver of Hereditary Rights and Interest Over a Real Property (Still Undivided) executed by Comandante is null and void for being violative of Article 1347 of the Civil Code, hence, petitioner's adverse claim which was based upon such waiver is likewise void and cannot confer upon the latter any right or interest over the property.

We agree with the respondents.

Pursuant to the second paragraph of Article 1347 of the Civil Code, no contract may be entered into upon a future inheritance except in cases expressly authorized by law. For the inheritance to be considered "future", the succession must not have been opened at the time of the contract. A contract may be classified as a contract upon future inheritance, prohibited under the second paragraph of Article 1347, where the following requisites concur:

- (1) That the succession has not yet been opened.
- (2) That the object of the contract forms part of the inheritance; and,
- (3) That the promisor has, with respect to the object, an expectancy of a right which is purely hereditary in nature.[38]

In this case, there is no question that at the time of execution of Comandante's Waiver of Hereditary Rights and Interest Over a Real Property (Still Undivided), succession to either of her parent's properties has not yet been opened since both of them are still living. With respect to the other two requisites, both are likewise present considering that the property subject matter of Comandante's waiver concededly forms part of the properties that she expect to inherit from her parents upon their death and, such expectancy of a right, as shown by the facts, is undoubtedly purely hereditary in nature.

From the foregoing, it is clear that Comandante and petitioner entered into a contract involving the former's future inheritance as embodied in the Waiver of Hereditary Rights and Interest Over a Real Property (Still Undivided) executed by her in petitioner's favor.

In *Tañedo v. Court of Appeals*,[39] we invalidated the contract of sale between Lazaro Tañedo and therein private respondents since the subject matter thereof was a "one hectare of whatever share the former shall have over Lot 191 of the cadastral survey of Gerona, Province of Tarlac and covered by Title T-13829 of the Register of Deeds of Tarlac." It constitutes a part of Tañedo's future inheritance from his parents, which cannot be the source of any right nor the creator of any obligation between the parties.

Guided by the above discussions, we similarly declare in this case that the Waiver of Hereditary Rights and Interest Over a Real Property (Still Undivided) executed by Comandante in favor of petitioner as not valid and that same cannot be the source of any right or create any obligation between them for being violative of the second paragraph of Article 1347 of the Civil Code.

Anent the validity and effectivity of petitioner's adverse claim, it is provided in Section 70 of PD 1529, that it is necessary that the claimant has a right or interest in the registered land adverse to the registered owner and that it must arise subsequent to registration. Here, as no right or interest on the subject property flows from Comandante's invalid waiver of hereditary rights upon petitioner, the latter is thus not entitled to the registration of his adverse claim. Therefore, petitioner's adverse claim is without any basis and must consequently be adjudged invalid and ineffective and perforce be cancelled.

Albeit we have already resolved the issues raised by petitioner, we shall not stop here as the Diazes and Comandante in their Comment[40] call our attention to the failure of the CA to pass upon the issue of the

propriety of the issuance by the trial court of the Summary Judgment in favor of petitioner despite the fact that they have raised this issue before the appellate court. They argue that summary judgment is proper only when there is clearly no genuine issue as to any material fact in the action. Thus, where the defendant presented defenses tendering factual issue which call for presentation of evidence, as when he specifically denies the material allegations in the complaint, summary judgment cannot be rendered.

The Diazes and Comandante then enumerate the genuine issues in the case which they claim should have precluded the trial court from issuing a summary judgment in petitioner's favor. First, the execution of the SPA in favor of Comandante referred to by petitioner in his complaint was never admitted by the Diazes. They assert that as such fact is disputed, trial should have been conducted to determine the truth of the matter, same being a genuine issue. Despite this, the trial court merely took the word of the plaintiff and assumed that said document was indeed executed by them. Second, although Comandante acknowledges that she has a personal obligation with petitioner, she nevertheless, did not admit that it was in the amount of P1,118,228.00. Instead, she claims only the amount of P500,000.00 or P600,000.00 (if inclusive of interest) as her obligation. Moreover, the Diazes deny borrowing any money from petitioner and neither did the Pangans owe him a single centavo. Thus, the true amount of the obligation due the petitioner and how each of the respondents are responsible for such amount are genuine issues which need formal presentation of evidence. Lastly, they aver that the trial court ignored factual and material issues such as the lack of probative value of Comandante's waiver of hereditary rights as well as of the SPA; the fact that Comandante signed the mortgage contract and promissory note in her personal capacity; and, that all such documents were prepared by petitioner who acted as a lawyer and the creditor of Comandante at the same time.

Rule 35 of the Rules of Court provides for summary judgment, the pertinent provisions of which are the following:

Section 1. Summary Judgment for claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof.

Section 2. Summary Judgment for the defending party. A party against whom a claim, counterclaim or cross-claim is asserted or a declaratory relief is sought may, at any time, move with supporting affidavits, depositions or admissions for a summary judgment in his favor as to all or any part thereof.

Section 3. Motion and proceedings thereon. The motion shall be served at least ten (10) days before the time specified for the hearing. The adverse party may serve opposing affidavits, depositions, or admissions at least three (3) days before the hearing. After the hearing, the judgment sought shall be rendered forthwith if the pleadings, supporting affidavits, depositions and admissions on file, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

As can be deduced from the above provisions, summary judgment is a procedural devise resorted to in order to avoid long drawn out litigations and useless delays. When the pleadings on file show that there are no genuine issues of facts to be tried, the Rules of Court allows a party to obtain immediate relief by way of summary judgment. That is, when the facts are not in dispute, the court is allowed to decide the case summarily by applying the law to the material facts. Conversely, where the pleadings tender a genuine issue, summary judgment is not proper. A genuine issue is such fact which requires the presentation of evidence as distinguished from a sham, fictitious, contrived or false claim.[41]

Here, we find the existence of genuine issues which removes the case from the coverage of summary judgment.

The variance in the allegations of the parties in their pleadings is evident.

Petitioner anchors his complaint for sum of money and/or judicial foreclosure on the alleged real estate mortgage over the subject property allegedly entered into by Comandante in behalf of her parents to secure payment of a loan amounting to P1,118,228.00. To support this claim, petitioner attached to his complaint (1) the SPA alleged to have been executed by the Diazes; (2) the Real Estate Mortgage Contract pertaining to the amount of P1,118,228.00; and, (3) a Promissory Note.

Comandante, in her Answer to petitioner's Amended Complaint, assailed the validity and due execution of the abovementioned documents. She asserted that the same were not duly, knowingly and validly executed by her and that it was petitioner who prepared all of them. Also, although she admitted owing petitioner, same was not an absolute admission as she limited herself to an obligation amounting only to P600,000.00 inclusive of charges and interests. She likewise claimed that such obligation is her personal obligation and not of her parents.

The Diazes, for their part, also denied that they executed the SPA authorizing their daughter to mortgage their property to petitioner as well as having any obligation to the latter.

Clearly, there are genuine issues in this case which require the presentation of evidence. For one, it is necessary to ascertain in a full blown trial the validity and due execution of the SPA, the Real Estate Mortgage and the Promissory Notes because the determination of the following equally significant questions depends on them, to wit: (1) Are the Diazes obligated to petitioner or is the obligation a purely personal obligation of Comandante? and, (2) Is the sum of P1,118,228.00 as shown in the Real Estate Mortgage and the Promissory Note, the amount which is really due the petitioner?

To stress, trial courts have limited authority to render summary judgments and may do so only when there is clearly no genuine issue as to any material fact. When the facts as pleaded by the parties are disputed or contested, proceedings for summary judgment cannot take the place of trial.[42] From the foregoing, it is apparent that the trial court should have refrained from issuing the summary judgment but instead proceeded to conduct a full blown trial of the case. In view of this, the present case should be remanded to the trial court for further proceedings and proper disposition according to the rudiments of a regular trial on the merits and not through an abbreviated termination of the case by summary judgment.

WHEREFORE, the petition is DENIED. The assailed Decision of the Court of Appeals dated December 12, 2003 insofar as it excluded the respondents Spouses Bienvenido Pangan and Elizabeth Pangan from among those solidarily liable to petitioner Atty. Pedro M. Ferrer, is AFFIRMED. The inscription of the adverse claim of petitioner Atty. Pedro M. Ferrer on T.C.T. No. N-209049 is hereby ordered CANCELLED. Insofar as its other aspects are concerned, the assailed Decision is SET ASIDE and VACATED. The case is REMANDED to the Regional Trial Court of Quezon City, Branch 224 for further proceedings in accordance with this Decision.

SO ORDERED.

Carpio, (Chairperson), Brion, Abad, and Perez, JJ., concur.

[1] Rollo, pp. 13-14.

[2] CA rollo, pp. 140-149; penned by Associate Justice Arsenio J. Magpale and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Bienvenido L. Reyes.

[3] Entitled "Atty. Pedro M. Ferrer, plaintiff-appellee, vs. Spouses Alfredo Diaz and Imelda Diaz, Reina Commandante and Spouses Bienvenido Pangan and Elizabeth Pangan".

[4] Records, pp. 287-291; penned by Judge Emilio L. Leachon, Jr.

[5] CA rollo, p. 91.

[6] Records, pp. 3-6.

[7] Id. at 7.

[8] Id. at 14-17.

[9] Id. at 92-95.

[10] Id. at 18.

[11] Id. at 19-20.

[12] Id. at 21.

[13] Id. at 3-6.

[14] Id. at 48-51 and 69-72.

[15] Id. at 29-33.

[16] Id. at 38.

[17] Id. at 208-219.

[18] ART. 1347. All things which are not outside the commerce of men, including future things, may be the object of a contract. All rights which are not intransmissible may also be the object of contracts.

No contract may be entered into upon future inheritance except in cases expressly authorized by law.

All services which are not contrary to law, morals, good customs, public order or public policy may likewise be the object of a contract.

[19] Records, p. 1.

[20] Id. at 93.

[21] See Answer with Compulsory Counter-Claim of the Diazes, id. at 231-237.

[22] See Answer with Compulsory Counter-Claim of the Pangans, id. at 172-183.

[23] Id.

[24] Id. at 246-257.

[25] Id. at 262-268.

[26] Id. at 286.

[27] Id. at 287-291.

[28] Id. at 290-291.

[29] Id. at 295 and 301.

[30] CA rollo, pp. 140-149.

[31] Id. at 148.

[32] Id. 166-170.

[33] Id. at 191.

[34] Dorsal side of p. 13 of the Records.

[35] Records, p. 66.

[36] Sajonas v. Court of Appeals, 327 Phil. 689, 712 (1996).

[37] Records, p. 290.

[38] J.L.T. Agro Inc. v. Balansag, 493 Phil. 365, 378-379 (2005).

[39] 322 Phil 84 (1996).

[40] Rollo, pp. 192-210.

[41] D.M. Consunji, Inc. v. Duvas Corporation, G.R. No. 155174, August 4, 2009.

[42] Id.

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