

SPOUSES WILFREDO N. ONG AND EDNA SHEILA PAGUIO-ONG, PETITIONERS, VS. ROBAN LENDING CORPORATION, RESPONDENT.

G.R. No. 172592. July 09, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On different dates from July 14, 1999 to March 20, 2000, petitioner-spouses Wilfredo N. Ong and Edna Sheila Paguio-Ong obtained several loans from Roban Lending Corporation (respondent) in the total amount of P4,000,000.00. These loans were secured by a real estate mortgage on petitioners' parcels of land located in Binauganan, Tarlac City and covered by TCT No. 297840.[1]

On February 12, 2001, petitioners and respondent executed an Amendment to Amended Real Estate Mortgage[2] consolidating their loans inclusive of charges thereon which totaled P5,916,117.50. On even date, the parties executed a Dacion in Payment Agreement[3] wherein petitioners assigned the properties covered by TCT No. 297840 to respondent in settlement of their total obligation, and a Memorandum of Agreement[4] reading:

That the FIRST PARTY [Roban Lending Corporation] and the SECOND PARTY [the petitioners] agreed to consolidate and restructure all aforementioned loans, which have been all past due and delinquent since April 19, 2000, and outstanding obligations totaling P5,916,117.50. The SECOND PARTY hereby sign [sic] another promissory note in the amount of P5,916,117.50 (a copy of which is hereto attached and forms xxx an integral part of this document), with a promise to pay the FIRST PARTY in full within one year from the date of the consolidation and restructuring, otherwise the SECOND PARTY agree to have their "DACION IN PAYMENT" agreement, which they have executed and signed today in favor of the FIRST PARTY be enforced.][5]

In April 2002 (the day is illegible), petitioners filed a Complaint,[6] docketed as Civil Case No. 9322, before the Regional Trial Court (RTC) of Tarlac City, for declaration of mortgage contract as abandoned, annulment of deeds, illegal exaction, unjust enrichment, accounting, and damages, alleging that the Memorandum of Agreement and the Dacion in Payment executed are void for being pactum commissorium.[7]

Petitioners alleged that the loans extended to them from July 14, 1999 to March 20, 2000 were founded on several uniform promissory notes, which provided for 3.5% monthly interest rates, 5% penalty per month on the total amount due and demandable, and a further sum of 25% attorney's fees thereon,[8] and in addition, respondent exacted certain sums denominated as "EVAT/AR." [9] Petitioners decried these additional charges as "illegal, iniquitous, unconscionable, and revolting to the conscience as they hardly allow any borrower any chance of survival in case of default." [10]

Petitioners further alleged that they had previously made payments on their loan accounts, but because of the illegal exactions thereon, the total balance appears not to have moved at all, hence, accounting was in order.[11]

Petitioners thus prayed for judgment:

- a) Declaring the Real Estate Mortgage Contract and its amendments x x x as null and void and without legal

force and effect for having been renounced, abandoned, and given up;

b) Declaring the "Memorandum of Agreement" xxx and "Dacion in Payment" x x x as null and void for being pactum commissorium;

c) Declaring the interests, penalties, Evat [sic] and attorney's fees assessed and loaded into the loan accounts of the plaintiffs with defendant as unjust, iniquitous, unconscionable and illegal and therefore, stricken out or set aside;

d) Ordering an accounting on plaintiffs' loan accounts to determine the true and correct balances on their obligation against legal charges only; and

e) Ordering defendant to [pay] to the plaintiffs: --

e.1 Moral damages in an amount not less than P100,000.00 and exemplary damages of P50,000.00;

e.2 Attorney's fees in the amount of P50,000.00 plus P1,000.00 appearance fee per hearing; and

e.3 The cost of suit.[12]

as well as other just and equitable reliefs.

In its Answer with Counterclaim,[13] respondent maintained the legality of its transactions with petitioners, alleging that:

x x x x

If the voluntary execution of the Memorandum of Agreement and Dacion in Payment Agreement novated the Real Estate Mortgage then the allegation of Pactum Commissorium has no more legal leg to stand on;

The Dacion in Payment Agreement is lawful and valid as it is recognized x x x under Art. 1245 of the Civil Code as a special form of payment whereby the debtor-Plaintiffs alienates their property to the creditor-Defendant in satisfaction of their monetary obligation;

The accumulated interest and other charges which were computed for more than two (2) years would stand reasonable and valid taking into consideration [that] the principal loan is P4,000,000 and if indeed it became beyond the Plaintiffs' capacity to pay then the fault is attributed to them and not the Defendant[.][14]

After pre-trial, the initial hearing of the case, originally set on December 11, 2002, was reset several times due to, among other things, the parties' efforts to settle the case amicably.[15]

During the scheduled initial hearing of May 7, 2003, the RTC issued the following order:

Considering that the plaintiff Wilfredo Ong is not around on the ground that he is in Manila and he is attending to a very sick relative, without objection on the part of the defendant's counsel, the initial hearing of this case is reset to June 18, 2003 at 10:00 o'clock in the morning.

Just in case [plaintiff's counsel] Atty. Concepcion cannot present his witness in the person of Mr. Wilfredo Ong in the next scheduled hearing, the counsel manifested that he will submit the case for summary judgment.[16] (Underscoring supplied)

It appears that the June 18, 2003 setting was eventually rescheduled to February 11, 2004 at which both counsels were present[17] and the RTC issued the following order:

The counsel[s] agreed to reset this case on April 14, 2004, at 10:00 o'clock in the morning. However, the counsels are directed to be ready with their memorand[a] together with all the exhibits or evidence needed to support their respective positions which should be the basis for the judgment on the pleadings if the parties fail

to settle the case in the next scheduled setting.

x x x x[18] (Underscoring supplied)

At the scheduled April 14, 2004 hearing, both counsels appeared but only the counsel of respondent filed a memorandum.[19]

By Decision of April 21, 2004, Branch 64 of the Tarlac City RTC, finding on the basis of the pleadings that there was no pactum commissorium, dismissed the complaint.[20]

On appeal,[21] the Court of Appeals[22] noted that

x x x [W]hile the trial court in its decision stated that it was rendering judgment on the pleadings, x x x what it actually rendered was a summary judgment. A judgment on the pleadings is proper when the answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading. However, a judgment on the pleadings would not have been proper in this case as the answer tendered an issue, i.e. the validity of the MOA and DPA. On the other hand, a summary judgment may be rendered by the court if the pleadings, supporting affidavits, and other documents show that, except as to the amount of damages, there is no genuine issue as to any material fact.[23]

Nevertheless, finding the error in nomenclature "to be mere semantics with no bearing on the merits of the case",[24] the Court of Appeals upheld the RTC decision that there was no pactum commissorium.[25]

Their Motion for Reconsideration[26] having been denied,[27] petitioners filed the instant Petition for Review on Certiorari,[28] faulting the Court of Appeals for having committed a clear and reversible error

- . . . WHEN IT FAILED AND REFUSED TO APPLY PROCEDURAL REQUISITES WHICH WOULD WARRANT THE SETTING ASIDE OF THE SUMMARY JUDGMENT IN VIOLATION OF APPELLANTS' RIGHT TO DUE PROCESS;

- . . . WHEN IT FAILED TO CONSIDER THAT TRIAL IN THIS CASE IS NECESSARY BECAUSE THE FACTS ARE VERY MUCH IN DISPUTE;

- . . . WHEN IT FAILED AND REFUSED TO HOLD THAT THE MEMORANDUM OF AGREEMENT (MOA) AND THE DACION EN PAGO AGREEMENT (DPA) WERE DESIGNED TO CIRCUMVENT THE LAW AGAINST PACTUM COMMISSORIUM; and

- . . . WHEN IT FAILED TO CONSIDER THAT THE MEMORANDUM OF AGREEMENT (MOA) AND THE DACION EN PAGO (DPA) ARE NULL AND VOID FOR BEING CONTRARY TO LAW AND PUBLIC POLICY.[29]

The petition is meritorious.

Both parties admit the execution and contents of the Memorandum of Agreement and Dacion in Payment. They differ, however, on whether both contracts constitute pactum commissorium or dacion en pago.

This Court finds that the Memorandum of Agreement and Dacion in Payment constitute pactum commissorium, which is prohibited under Article 2088 of the Civil Code which provides:

The creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them. Any stipulation to the contrary is null and void."

The elements of pactum commissorium, which enables the mortgagee to acquire ownership of the mortgaged property without the need of any foreclosure proceedings,[30] are: (1) there should be a property mortgaged by way of security for the payment of the principal obligation, and (2) there should be a stipulation for automatic

appropriation by the creditor of the thing mortgaged in case of non-payment of the principal obligation within the stipulated period.[31]

In the case at bar, the Memorandum of Agreement and the Dacion in Payment contain no provisions for foreclosure proceedings nor redemption. Under the Memorandum of Agreement, the failure by the petitioners to pay their debt within the one-year period gives respondent the right to enforce the Dacion in Payment transferring to it ownership of the properties covered by TCT No. 297840. Respondent, in effect, automatically acquires ownership of the properties upon petitioners' failure to pay their debt within the stipulated period.

Respondent argues that the law recognizes dacion en pago as a special form of payment whereby the debtor alienates property to the creditor in satisfaction of a monetary obligation.[32] This does not persuade. In a true dacion en pago, the assignment of the property extinguishes the monetary debt.[33] In the case at bar, the alienation of the properties was by way of security, and not by way of satisfying the debt.[34] The Dacion in Payment did not extinguish petitioners' obligation to respondent. On the contrary, under the Memorandum of Agreement executed on the same day as the Dacion in Payment, petitioners had to execute a promissory note for P5,916,117.50 which they were to pay within one year.[35]

Respondent cites *Solid Homes, Inc. v. Court of Appeals*[36] where this Court upheld a Memorandum of Agreement/Dacion en Pago .[37] That case did not involve the issue of pactum commissorium.[38]

That the questioned contracts were freely and voluntarily executed by petitioners and respondent is of no moment, pactum commissorium being void for being prohibited by law.[39]

Respecting the charges on the loans, courts may reduce interest rates, penalty charges, and attorney's fees if they are iniquitous or unconscionable.[40]

This Court, based on existing jurisprudence,[41] finds the monthly interest rate of 3.5%, or 42% per annum unconscionable and thus reduces it to 12% per annum. This Court finds too the penalty fee at the monthly rate of 5% (60% per annum) of the total amount due and demandable – principal plus interest, with interest not paid when due added to and becoming part of the principal and likewise bearing interest at the same rate, compounded monthly [42] – unconscionable and reduces it to a yearly rate of 12% of the amount due, to be computed from the time of demand.[43] This Court finds the attorney's fees of 25% of the principal, interests and interests thereon, and the penalty fees unconscionable, and thus reduces the attorney's fees to 25% of the principal amount only.[44]

The prayer for accounting in petitioners' complaint requires presentation of evidence, they claiming to have made partial payments on their loans, vis a vis respondent's denial thereof.[45] A remand of the case is thus in order.

Prescinding from the above disquisition, the trial court and the Court of Appeals erred in holding that a summary judgment is proper. A summary judgment is permitted only if there is no genuine issue as to any material fact and a moving party is entitled to a judgment as a matter of law.[46] A summary judgment is proper if, while the pleadings on their face appear to raise issues, the affidavits, depositions, and admissions presented by the moving party show that such issues are not genuine.[47] A genuine issue, as opposed to a fictitious or contrived one, is an issue of fact that requires the presentation of evidence.[48] As mentioned above, petitioners' prayer for accounting requires the presentation of evidence on the issue of partial payment.

But neither is a judgment on the pleadings proper. A judgment on the pleadings may be rendered only when an answer fails to tender an issue or otherwise admits the material allegations of the adverse party's pleadings.[49] In the case at bar, respondent's Answer with Counterclaim disputed petitioners' claims that the Memorandum of Agreement and Dacion in Payment are illegal and that the extra charges on the loans are unconscionable.[50] Respondent disputed too petitioners' allegation of bad faith. [51]

WHEREFORE, the challenged Court of Appeals Decision is REVERSED and SET ASIDE. The Memorandum of Agreement and the Dacion in Payment executed by petitioner- spouses Wilfredo N. Ong and Edna Sheila Paguio-Ong and respondent Roban Lending Corporation on February 12, 2001 are declared NULL AND VOID for being pactum commissorium.

In line with the foregoing findings, the following terms of the loan contracts between the parties are MODIFIED as follows:

- The monthly interest rate of 3.5%, or 42% per annum, is reduced to 12% per annum;
- The monthly penalty fee of 5% of the total amount due and demandable is reduced to 12% per annum, to be computed from the time of demand; and
- The attorney's fees are reduced to 25% of the principal amount only.

Civil Case No. 9322 is REMANDED to the court of origin only for the purpose of receiving evidence on petitioners' prayer for accounting.

SO ORDERED.

Quisumbing, (Chairperson), Tinga, Velasco, Jr., and Brion, JJ., concur.

[1] Records, pp. 11-16.

[2] Id. at 37.

[3] Id. at 40.

[4] Id. at 38-39.

[5] Id. at 38-39.

[6] Id. at 1-5.

[7] Id. at 2.

[8] Id. at 2-3. Vide id. at 20.

[9] Id. at 21.

[10] Id. at 3.

[11] Id. at 3.

[12] Id. at 4.

[13] Id. at 51-54.

[14] Id. at 52-53.

[15] Id. at 127-128, 138-143, 147-153.

[16] Id. at 141.

[17] Id. at 154.

[18] Id. at 155.

[19] Id. at 156-164, 204.

[20] Id. at 205-206.

[21] Id. at 207.

[22] Decision of November 30, 2005, penned by Court of Appeals Associate Justice Portia Aliño-Hormachuelos, with the concurrences of Associate Justices Mariano C. Del Castillo and Magdangal M. de Leon. CA rollo, pp. 35-45.

[23] CA rollo, pp. 40-41.

[24] Id. at 41.

[25] Id. at 41-43.

[26] Id. at 48-53.

[27] Id. at 65-66.

[28] Id. at 8-25.

[29] Rollo, p. 15.

[30] Vide Lumayag v. Heirs of Jacinto Nemeño, G.R. No. 162112, July 3, 2007, 526 SCRA 315, 328.

[31] Development Bank of the Philippines v. Court of Appeals, 348 Phil. 15, 31 (1998).

[32] Records, p. 53. Vide CIVIL CODE, Article 1245.

[33] Vide CIVIL CODE, Article 1245; Development Bank of the Philippines v. Court of Appeals, 348 Phil. 15, 30 (1998).

[34] Vide Development Bank of the Philippines v. Court of Appeals, *ibid.*

[35] Records, p. 38.

[36] 341 Phil. 261 (1997).

[37] Records, p. 160.

[38] Solid Homes, Inc. v. Court of Appeals, *supra* note 37 at 274-280.

[39] Vide CIVIL CODE, Articles 1409 and 2088.

[40] Vide CIVIL CODE, Articles 1229 and 2227; United Coconut Planters Bank v. Beluso, G.R. No. 159912, August 17, 2007, 530 SCRA 567, 590; Poltan v. BPI Family Savings Bank, Inc., G.R. No. 164307, March 5, 2007, 517 SCRA 430, 444-446; Radiowealth Finance Co., Inc. v. International Corporate Bank, G.R. Nos. 77042-43, February 28, 1990, 182 SCRA 862, 868-869.

[41] Vide Poltan v. BPI Family Savings Bank, Inc., G.R. No. 164307, March 5, 2007, 517 SCRA 430, 444-446.

[42] Records, p. 41.

[43] Vide United Coconut Planters Bank v. Beluso, G.R. No. 159912, August 17, 2007, 530 SCRA 567, 590, 604-605.

[44] Vide Titan Construction Corporation v. Uni-Field Enterprises, Inc., G.R. No. 153874, March 1, 2007, 517

SCRA 180, 190.

[45] Vide records, pp. 3, 51-52.

[46] RULES OF COURT, Rule 35, Section 3; Pineda v. Heirs of Eliseo Guevarra, G.R. No. 143188, February 14, 2007, 515 SCRA 627, 638.

[47] Vide Marcelo v. Sandiganbayan, G.R. No. 156605, August 28, 2007, 531 SCRA 385, 398.

[48] Ibid.

[49] RULES OF COURT, Rule 34, Section 1.

[50] Records, pp. 53.

[51] Id. at 51.

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