

DAO HENG BANK, INC., NOW BANCO DE ORO UNIVERSAL BANK, PETITIONER, VS. SPS. LILIA AND REYNALDO LAIGO, RESPONDENTS.

G.R. No. 173856. November 20, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The Spouses Lilia and Reynaldo Laigo (respondents) obtained loans from Dao Heng Bank, Inc. (Dao Heng) in the total amount of P11 Million, to secure the payment of which they forged on October 28, 1996, November 18, 1996 and April 18, 1997 three Real Estate Mortgages covering two parcels of land registered in the name of respondent "Lilia D. Laigo, . . . married to Reynaldo Laigo," one containing 569 square meters and the other containing 537 square meters.

The mortgages were duly registered in the Registry of Deeds of Quezon City.

The loans were payable within 12 months from the execution of the promissory notes covering the loans. As of 2000, respondents failed to settle their outstanding obligation, drawing them to verbally offer to cede to Dao Heng one of the two mortgaged lots by way of dacion en pago. To appraise the value of the mortgaged lands, Dao Heng in fact commissioned an appraiser whose fees were shouldered by it and respondents.

There appears to have been no further action taken by the parties after the appraisal of the properties.

Dao Heng was later to demand the settlement of respondents' obligation by letter of August 18, 2000[1] wherein it indicated that they had an outstanding obligation of P10,385,109.92 inclusive of interests and other charges. Respondents failed to heed the demand, however.

Dao Heng thereupon filed in September 2000 an application to foreclose the real estate mortgages executed by respondents. The properties subject of the mortgage were sold for P10,776,242 at a public auction conducted on December 20, 2000 to Banco de Oro Universal Bank (hereafter petitioner) which was the highest bidder.

It appears that respondents negotiated for the redemption of the mortgages for by a June 29, 2001 letter[2] to them, petitioner, to which Dao Heng had been merged, through its Vice President on Property Management & Credit Services Department, advised respondent Lilia Laigo as follows:

This is to formally advise you of the bank's response to your proposal pertaining to the redemption of the two (2) foreclosed lots located in Fairview, Quezon City as has been relayed to you last June 13, 2001 as follows:

- Redemption price shall be P11.5MM plus 12% interest based on diminishing balance payable in staggered payments up to January 2, 2002 as follows:
- P3MM - immediately upon receipt of this approval
- Balance payable in staggered payments (plus interest) up to January 2, 2002
- Release Values for Partial Redemption:

- TCT No. 92257 (along Commonwealth) P7.500 MM*
- TCT No. N-146289 (along Regalado) P4.000 MM*
- * excluding 12% interest
- Other Conditions:
- Payments shall be covered by post dated checks
- TCT No. 92257 shall be the first property to be released upon payment of the first P7.5MM plus interest
- Arrangement to be covered by an Agreement

If you are agreeable to the foregoing terms and conditions, please affix your signature showing your conformity thereto at the space provided below. (Emphasis and underscoring in the original; italics supplied)

Nothing was heard from respondents, hence, petitioner by its Manager, Property Management & Credit Services Department, advised her by letter of December 26, 2001[3] that in view of their failure to conform to the conditions set by it for the redemption of the properties, it would proceed to consolidate the titles immediately after the expiration of the redemption period on January 2, 2002.

Six days before the expiration of the redemption period or on December 27, 2001, respondents filed a complaint before the Regional Trial Court (RTC) of Quezon City, for Annulment, Injunction with Prayer for Temporary Restraining Order (TRO), praying for the annulment of the foreclosure of the properties subject of the real estate mortgages and for them to be allowed "to deliver by way of `dacion en pago' one of the mortgaged properties as full payment of [their] mortgaged obligation" and to, in the meantime, issue a TRO directing the defendant-herein petitioner to desist from consolidating ownership over their properties.

By respondents' claim, Dao Heng verbally agreed to enter into a dacion en pago.

In its Opposition to respondents' Application for a TRO,[4] petitioner claimed that there was no meeting of the minds between the parties on the settlement of respondents' loan via dacion en pago.

A hearing on the application for a TRO was conducted by Branch 215 of the RTC of Quezon City following which it denied the same.

Petitioner thereupon filed a Motion to Dismiss the complaint on the ground that the claim on which respondents' action is founded is unenforceable under the Statute of Frauds and the complaint states no cause of action. Respondents opposed the motion, contending that their delivery of the titles to the mortgaged properties constituted partial performance of their obligation under the dacion en pago to take it out from the coverage of the Statute of Frauds.

The trial court granted petitioner's Motion to Dismiss in this wise:

[P]laintiffs' claim must be based on a document or writing evidencing the alleged dacion en pago, otherwise, the same cannot be enforced in an action in court. The Court is not persuaded by plaintiffs' contention that their case is an exception to the operation of the rule on statute of frauds because of their partial performance of the obligation in the dacion en pago consisting of the delivery of the titles of the properties to the defendants. As correctly pointed out by the defendants, the titles were not delivered to them pursuant to the dacion en pago but by reason of the execution of the mortgage loan agreement. If indeed a dacion en pago agreement was entered into between the parties, it is inconceivable that a written document would not be drafted considering the magnitude of the amount involved.[5] (Emphasis and underscoring supplied)

Respondents assailed the dismissal of their complaint via Petition for Review before this Court which referred it to the Court of Appeals for disposition.

Reversing the trial court's dismissal of the complaint, the appellate court, by Decision of January 26, 2006,[6] reinstated respondents' complaint.[7]

In ordering the reinstatement of respondents' complaint, the appellate court held that the complaint states a cause of action, respondents having alleged that there was partial performance of the agreement to settle their obligation via dacion en pago when they agreed to have the properties appraised to thus place their agreement within the exceptions provided under Article 1403[8] of the Civil Code on Statute of Frauds. Thus the appellate court ratiocinated:

Particularly, in seeking exception to the application of the Statute of Frauds, petitioners[-herein respondents] averred partial performance of the supposed verbal dacion en pago. In paragraph 5 of their complaint, they stated: "As part of the agreement, defendant Dao Heng Bank had the mortgaged property appraised to determine which of the two shall be delivered as full payment of the mortgage obligation; Also as part of the deal, plaintiffs for their part paid P5,000.00 for the appraisal expense. As reported by the appraiser commissioned by Defendant Dao Heng, the appraised value of the mortgaged properties were as follows: x x x" Having done so, petitioners are at least entitled to a reasonable opportunity to prove their case in the course of a full trial, to which the respondents may equally present their evidence in refutation of the formers' case. (Underscoring supplied)

Petitioner's Motion for Reconsideration having been denied by the appellate court by Resolution of July 19, 2006, the present petition was filed faulting the appellate court in ruling:

I.

. . . THAT THE COMPLAINT ALLEGED A SUFFICIENT CAUSE OF ACTION DESPITE THE ALLEGATIONS, AS WELL AS ADMISSIONS FROM THE RESPONDENTS, THAT THERE WAS NO PERFECTED DACION EN PAGO CONTRACT;

II.

. . . THAT THE ALLEGED DACION EN PAGO IS NOT UNENFORCEABLE UNDER THE STATUTE OF FRAUDS, DESPITE THE ABSENCE OF A WRITTEN & BINDING CONTRACT;

III.

. . . THAT THE COMPLAINT SUFFICIENTLY STATED A CAUSE OF ACTION.[9]

Generally, the presence of a cause of action is determined from the facts alleged in the complaint.

In their complaint, respondents alleged:

x x x x

4. Sometime in the middle of the year 2000, defendant Dao Heng Bank as the creditor bank agreed to the full settlement of plaintiffs' mortgage obligation of P9 Million through the assignment of one of the two (2) mortgaged properties;

[5] As part of the agreement, defendant Dao Heng Bank had the mortgaged properties appraised to determine which of the two (2) mortgaged properties shall be delivered as full payment of the mortgage obligation; Also as part of the deal, plaintiffs for their part paid P5,000.00 for the appraisal expense; As reported by the appraiser commissioned by defendant Dao Heng, the appraised value of the mortgaged properties were as follows:

(a) Property No. 1 - T.C.T. No. 92257: P12,518,000.00

L2A Blk 12 Don Mariano Marcos

Ave., Fairview, QC

(b) Property No. 2 - T.C.T. No. 146289: P8,055,000.00 L36 Blk 87

Regalado Ave. Cor. Ipil St., Neopolitan, QC

[6] Sometime in December, year 2000, the protest of plaintiffs notwithstanding and in blatant breach of the agreed "Dacion en Pago" as the mode of full payment of plaintiffs' mortgage obligation, defendant Dao Heng Bank proceeded to foreclose the mortgaged properties above-described and sold said properties which were aggregately valued at more than P20 Million for only P10,776,242.00, an unconscionably very low price; (Underscoring supplied)

Even if a complaint states a cause of action, however, a motion to dismiss for insufficiency of cause of action may be granted if the evidence discloses facts sufficient to defeat the claim and enables the court to go beyond the disclosures in the complaint. In such instances, the court can dismiss a complaint on this ground, even without a hearing, by taking into account the discussions in said motion to dismiss and the disposition thereto.[10]

In its Opposition to respondents' application for the issuance of a TRO,[11] petitioner, responding to respondents' allegation that it agreed to the settlement of their obligation via the assignment of one of the two mortgaged properties, alleged that there was no meeting of the minds thereon:

4. Plaintiffs' claim that defendant Dao Heng Bank[s] foreclosure sale of the mortgaged properties was improper because there was an agreement to dacion one of the two (2) mortgaged properties as full settlement of the loan obligation and that defendant Dao Heng Bank and Banco de Oro were already negotiating and colluding for the latter's acquisition of the mortgaged [properties] for the unconscionably low price of P10,776.242.00 are clearly WITHOUT BASIS. Quite to the contrary, there was no meeting of the minds between defendant Dao Heng Bank and the plaintiffs to dacion any of the mortgaged properties as full settlement of the loan. Although there was a PROPOSAL and NEGOTIATIONS to settle the loan by way of dacion, nothing came out of said proposal, much less did the negotiations mature into the execution of a dacion en pago instrument. Defendant Dao Heng Bank found the offer to settle by way of dacion not acceptable and thus, it opted to foreclose on the mortgage.

The law clearly provides that "the debtor of a thing cannot compel the creditor to receive a different one, although the latter may be of the same value, or more valuable than that which is due" (Article 1244, New Civil Code). "The obligee is entitled to demand fulfillment of the obligation or performance as stipulated" (Palmares v. Court of Appeals, 288 SCRA 422 at p. 444 [1998]). "The power to decide whether or not to foreclose on the mortgage is the sole prerogative of the mortgagee" (Rural Bank of San Mateo, Inc. vs. Intermediate Appellate Court, 146 SCRA 205, at 213 [1986]) Defendant Dao Heng Bank merely opted to exercise such prerogative.[12] (Emphasis in the original; capitalization and underscoring supplied)

Dacion en pago as a mode of extinguishing an existing obligation partakes of the nature of sale whereby property is alienated to the creditor in satisfaction of a debt in money.[13] It is an objective novation of the obligation, hence, common consent of the parties is required in order to extinguish the obligation.

. . . In dacion en pago, as a special mode of payment, the debtor offers another thing to the creditor who accepts it as equivalent of payment of an outstanding debt. The undertaking really partakes in one sense of the nature of sale, that is, the creditor is really buying the thing or property of the debtor, payment for which is to be charged against the debtor's debt. As such the elements of a contract of sale, namely, consent, object certain, and cause or consideration must be present. In its modern concept, what actually takes place in dacion en pago

is an objective novation of the obligation where the thing offered as an accepted equivalent of the performance of an obligation is considered as the object of the contract of sale, while the debt is considered the purchase price. In any case, common consent is an essential prerequisite, be it sale or novation, to have the effect of totally extinguishing the debt or obligation."^[14] (Emphasis, italics and underscoring supplied; citation omitted)

Being likened to that of a contract of sale, dacion en pago is governed by the law on sales.^[15] The partial execution of a contract of sale takes the transaction out of the provisions of the Statute of Frauds so long as the essential requisites of consent of the contracting parties, object and cause of the obligation concur and are clearly established to be present.^[16]

Respondents claim that petitioner's commissioning of an appraiser to appraise the value of the mortgaged properties, his services for which they and petitioner paid, and their delivery to petitioner of the titles to the properties constitute partial performance of their agreement to take the case out of the provisions on the Statute of Frauds.

There is no concrete showing, however, that after the appraisal of the properties, petitioner approved respondents' proposal to settle their obligation via dacion en pago. The delivery to petitioner of the titles to the properties is a usual condition sine qua non to the execution of the mortgage, both for security and registration purposes. For if the title to a property is not delivered to the mortgagee, what will prevent the mortgagor from again encumbering it also by mortgage or even by sale to a third party.

Finally, that respondents did not deny proposing to redeem the mortgages,^[17] as reflected in petitioner's June 29, 2001 letter to them, dooms their claim of the existence of a perfected dacion en pago.

WHEREFORE, the Court of Appeals Decision of January 26, 2006 is REVERSED and SET ASIDE. The Resolution of July 2, 2002 of the Regional Trial Court of Quezon City, Branch 215 dismissing respondents' complaint is REINSTATED.

SO ORDERED.

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

[1] Records, p. 29.

[2] Id. at 38.

[3] Id. at 39-40.

[4] Id. at 13-18.

[5] Id. at 120.

[6] Penned by Justice Monina Arevalo-Zenarosa, with the concurrence of Justices Andres B. Reyes, Jr. and Rosmari D. Carandang. CA rollo, pp. 113-124.

[7] Id. at 124.

[8] Article 1403. The following contracts are unenforceable unless they are ratified: x x x

(2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum

thereof be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents: x x x

(e) An agreement for the leasing for a longer period than one year, or for the sale of real property or of an interest therein; x x x

[9] Rollo, p. 32.

[10] Florenz D. Regalado, REMEDIAL LAW COMPENDIUM, Vol. 1 (2005), citing *Tan v. Director of Forestry, et al.*, L-24548, Oct. 27, 1983, 210 Phil. 244.

[11] *Supra* note 4.

[12] Records, pp. 15-16.

[13] Civil Code, Article 1245.

[14] *Filinvest Credit Association v. Philippine Acetylene Co.*, 197 Phil. 394, 402-403 (1982).

[15] *Supra* note 13 at Article 1245.

[16] *Vda. de Jomoc v. Court of Appeals*, G.R. No. 92871, August 2, 1991, 200 SCRA 74, 77-78.

[17] *Supra* note 2

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