

**SPOUSES DIVINIA C. PUBLICO AND JOSE T. PUBLICO, PETITIONERS,
VS. TERESA BAUTISTA, RESPONDENT.***G.R. No. 174096. July 20, 2010*

Ponente: CARPIO MORALES, J.

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Petitioners, spouses Divinia Publico (Divinia) and Jose Publico (Jose) obtained on April 12, 1996 a P200,000 loan from Teresa Bautista (respondent) which was secured by a real estate mortgage (REM) over a real property covered by Transfer Certificate of Title (TCT) No. T-244828.

The REM, "Kasulatan ng Pagkakautang na may Panagot[1]" (Kasulatan), provides, inter alia, that the loan would bear interest and penalties to would be paid within one-and-a-half years, failing which the mortgaged property would be sold pursuant to Act 3135.[2] Petitioners surrendered the owners' copy of TCT No. T-244828 to respondent.

In September 1996, petitioners borrowed from respondent the owners' copy of the title in order to re-mortgage the property covered thereby to secure another loan the proceeds of which would be used to pay respondent. Divina executed a Pagpapatunay[3] reading:

x x x x

Na, ang aking pagkakautang ay aking babayaran kung ang titulong ito ay mainsanla ko sa banko at kami ay nagkasundo din na sa P200,00.00 thousand [sic] na aking pagkakautang ay magbibigay muna ako ng P100,000.00 [sic]. At mag-iiwan ako ng rehistro ng aking sasakyan sa Taxi na may numero na MVMR 40693326 MVMT 36169691 para naman sa natitirang balanse na P100,000.00 thousand [sic] bilang prenda.

x x x x[4]

Petitioners thereupon obtained a P200,000 loan from Hiyas Savings and Loan Bank, Inc. (Hiyas Bank).[5] They, however, failed to settle their obligation to respondent. Respondent, fearing that Hiyas Bank might foreclose the mortgage, offered Hiyas Bank to pay petitioners' loan. The bank agreed to the proposal, with the condition that respondent also pay the other obligations of petitioners that were secured by REMs on two other properties covered by TCT Nos. T-265662 (M) and T-265663.

In the presence of petitioner Jose, respondent settled petitioners' obligations to the bank amounting to P697,714.58. The receipts of payment were in the name of Jose, however, albeit it contained annotations on the dorsal portions thereof that respondent advanced the payment of petitioners' obligations. Both Jose and respondent affixed their signatures on the annotations.[6]

Despite demands, petitioners failed to pay their obligations totaling P897,714.58, hence, respondent filed on February 1, 1999 a Complaint[7] for foreclosure of mortgage, sum of money and damages before the Regional Trial Court (RTC) of Bulacan.

In their Answer with Counterclaim,[8] petitioners alleged that they had paid their obligations.

By Decision[9] of May 16, 2002, Branch 19 of the Bulacan RTC, noting that petitioners did not present evidence in support of their bare assertions,[10] rendered judgment against petitioners, disposing as follows:

WHEREFORE, judgment is hereby rendered in favor of [respondent] and against [petitioners] as follows:

- [On] the first cause of action

a) Ordering [petitioners] to pay [respondent] the principal sum of P200,000.00 plus interest at the rate of 6% per year and penalty at the rate of 6% per year both to commence on October 26, 1998.

b) In default thereof, the mortgaged property under TCT No. T-244828 shall be ordered foreclosed by the Court.

- On the second cause of action

a) Ordering [petitioners] to pay [respondent] the total amount of P697, [714.58] plus interest at the rate of 6% per year to commence on October 26, 1998.

- On the third cause of action

a) Ordering [petitioners] to pay [respondent] the sum of P20,000.00 as and by way of attorney's fees.

b) Ordering [petitioners] to pay costs of suit.

- [Respondent] is directed to return TCT Nos. T-265662(M) and T-265663 to [petitioners]-spouses.

All other damages prayed for by the [respondent] and the counterclaim of [petitioners] are dismissed for lack of merit.

SO ORDERED.

On respondent's Motion,[11] the trial court amended its decision to indicate the rate of interest at 12% per annum on petitioners' unpaid loans.[12]

The Court of Appeals to which petitioners appealed, affirmed the trial court's decision, by Decision[13] of November 29, 2005 in this wise:

x x x x

A perusal of the "Pagpapatunay" executed by the appellant Divinia reveals, all to plainly, that novation has not taken place, and that the loan obligation of appellants contained in the "Kasulatan ng Pagkakautang na may Panagot" subsists despite the latter agreement. Appellants' contention that the change effected in the latter covenant - the former secured obligation having been converted to an unsecured obligation - operates as a change in the principal conditions of the obligation is unavailing. It must be stressed that the real estate mortgage constituted by appellants is a security for their loan obligation with appellee, but is not, and will never be, the principal obligation itself.

x x x x

x x x What had been created by the new agreement is, at best, a conditional obligation, which could not have extinguished the previous pure obligation.

x x x x

By its terms, the "Pagpapatunay" is a conditional promise of payment, which, although made in consideration of the principal indebtedness, could not be deemed to have substituted the main obligation unless and until the

condition is fulfilled. Only the payment as promised therein could have given rise to the new obligation referred to under the same.

After evaluating the testimonies of the parties and their witnesses, the trial court found that such payment had not been made x x x.

x x x x

As to whether or not appellants are liable to appellee for the amount advanced by the latter for settlement of the former's mortgage indebtedness with Hiyas Bank, We answer in the affirmative.

Based on the official receipts issued by the Hiyas Bank, payment was accepted not from appellee but from appellant Jose, who is himself a principal debtor with respect to appellants' mortgage indebtedness to the said bank. The acknowledgement made by appellant Jose annotated on the dorsal portion of the official receipts issued by Hiyas Bank is an express recognition that the money paid by him to the bank was advanced to him by the appellee. Thus, there is no doubt that, as between appellants and appellee, another contract of loan was created through the transaction, and that, appellants are obligated to the repayment of such loan, upon demand.

Appellants contend that appellee could not compel them to reimburse the amount paid to Hiyas Bank, since such payment is one made by a third person without the knowledge of the debtor and triggers into operation Article 1236 of the Civil Code, the second paragraph of which reads:

Whoever pays for the debt of another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor.

Even granting that the payment was one made by a third person, although the evidence tend[s] to prove that it was not, we find at least three circumstances which militate against appellants' contention: first, such payment was expressly allowed by appellant Jose, who was himself a principal debtor; second, such payment is beneficial to the appellants since it served to release their properties from encumbrance; and third, when appellant Divinia learned about the payment made by her husband and appellee, she did nothing to express her objection thereto, or her repudiation thereof, within a reasonable time. The debtor who knows that another has paid his obligation for him and who does not object thereto or repudiate it at any time, must pay the amount advanced by the third person.

x x x x[14] (emphasis and underscoring supplied)

Petitioners' motion for reconsideration was denied.[15] On petitioners' contention that they were deprived of the equity of redemption because the trial court did not fix a period within which to pay the judgment debt,[16] the appellate court clarified that:

x x x paragraph 1 (a) of the dispositive portion of the Decision appealed from, as modified by the Order dated October 18, 2002, ordering appellants to pay the plaintiff the principal sum of P200,000.00 plus interest at the rate of 12% per year and penalty at the rate of 6% per year to commence on October 16, 1998, should include the phrase "within ninety (90) days from finality of judgment" declared in the body thereof.[17] (emphasis and underscoring supplied)

Hence, the present petition[18] raising the following issues:

- WHETHER...[RESPONDENT] COULD STILL FILE AN ACTION FOR JUDICIAL FORECLOSURE ON THE BASIS OF THE "KASULATAN NG PAGPAPAUTANG NA MAY PANAGOT" DESPITE THE...SUBSEQUENT EXECUTION OF THE "PAGPAPATUNAY" AND THE DELIVERY OF THE OWNERS' COPY OF TCT [NO.] 244828 TO [DIVINIA];

- ASSUMING THAT [RESPONDENT] COULD FILE [SAID ACTION]..., WHETHER...PETITIONERS

WERE DEPRIVED OF THE EQUITY OF REDEMPTION;

- WHETHER...THERE WAS A VALID SUBROGATION UNDER ARTICLE 1294 [OF THE] CIVIL CODE;

- WHETHER...THE AWARD OF ATTORNEY'S FEES [WAS PROPER].[19]

Petitioners assert that the mortgage had been cancelled and discharged not only by the Pagpapatunay but also by respondent's act of paying their debt with Hiyas Bank to thus make respondent the subrogee of the bank. To petitioners, the remedy of respondent is to sue for collection of sum of money, and not the foreclosure of mortgage.[20]

Respondent counters that the Pagpapatunay did not take the place of the Kasulatan since she merely allowed petitioners to remortgage the property; that petitioners failed to present any evidence to show payment of their outstanding loan obligations; and that she was compelled to litigate to protect her interest to thus justify the award of attorney's fees.[21]

The petition fails.

The Pagpapatunay was not a new obligation which could have extinguished the Kasulatan since the condition of payment that was set out in the Pagpapatunay was never fulfilled. The trial court found that no competent evidence was introduced, except the bare assertion of Divinia, to prove petitioners' payment of the obligation or that they complied with the conditions set out in the Pagpapatunay. As did the appellate court, the Court sustains the trial court's finding.

Petitioners' invocation of Article 1236 of the Civil Code does not help them. They cannot deny their indebtedness to respondent on the basis of said Article[22] since the payment advanced by respondent on petitioners' behalf redounded to their benefit and Divinia never objected to it when she came to learn of it. It is thus immaterial that Divinia was unaware of respondent's action for the law ultimately allows recovery to the extent that the debtors-petitioners were benefited.

Clutching at straws, petitioners claim that they were deprived of the equity of redemption when the trial court failed to state the period within which they could redeem. The Court of Appeals, however, did specify a period of "ninety (90) days from finality of judgment" to pay the adjudged amount. This is in consonance with the period mentioned by Section 2, Rule 68 of the 1997 Rules of Civil Procedure.[23] While the trial court did not use the phrase "entry of judgment" as the reckoning point for the redemption period, the Rules provide that the date of finality of the judgment shall be deemed to be the date of its entry.[24]

Petitioners can thus exercise their equity of redemption within the period provided, and even thereafter, provided they do so before the foreclosure sale is confirmed by the trial court.[25]

Respecting the third issue, petitioners' contention of valid subrogation under Article 1294 of the Civil Code is misplaced. The appellate court aptly ruled that

x x x x there is no subrogation to speak of in this case, precisely because the law itself proscribes the subrogation of the third person to the rights of the creditor when payment had been made by such third person, in the absence of an express contractual stipulation authorizing the same. The right to recover from the debtor is based on the mere fact of payment and on considerations of justice, but it gives to the third person who paid only a simple action for reimbursement, without the securities, guaranties and other rights recognized in the creditor, which are extinguished by the payment. Consequently, Hiyas Bank has no interest in the suit between [petitioners] and [respondent]. x x x[26] (citations omitted; emphasis and underscoring supplied)

It bears pointing out that petitioners invoked their theory of subrogation only to question why Hiyas Bank was not impleaded as an indispensable party. The trial court correctly ruled that Hiyas Bank was not an indispensable party to the case.

On the final issue of award of attorney's fees, while indeed the trial court failed to discuss the legal basis thereof, the Court holds that petitioners' failure to satisfy their just obligations has compelled respondent to litigate and incur expenses to protect her interest.[27] Surely, it is only just and equitable to award attorney's fees in respondent's favor for litigating and incurring expenses since 1999 when she filed her complaint.

WHEREFORE, the petition is DENIED.

Costs against petitioners.

SO ORDERED.

Brion, Bersamin, Abad,[**] and Villarama, Jr., JJ., concur.

[*] Petitioner Jose T. Publico died during the pendency of the case and was substituted by his heirs Judy C. Publico and Jose Publico, Jr.

[**] Additional member per Special Order No. 843 dated May 17, 2010.

[1] Records, pp. 8-9.

[2] Entitled "An Act To Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real-Estate Mortgages" as amended by Act 4118.

[3] Records, p. 10.

[4] Ibid.

[5] Id. at 76 (dorsal side).

[6] Id. at 12-13. Exhibits "D-1, D-2, D-3, E-1, E-2 and E-3."

[7] Id. at 2-7.

[8] Id. at 29-32.

[9] Id. at 244-248. Penned by Presiding Judge Renato C. Francisco.

[10] Id. at 246.

[11] Id. at 249-251.

[12] Id. at 261.

[13] CA rollo, pp. 79-91. Penned by Associate Justice Magdangal M. de Leon with the concurrences of Associate Justices Portia Aliño-Hormachuelos and Mariano C. del Castillo (now a member of the Court).

[14] Id. at 86-90.

[15] Id. at 114-118.

[16] Id. at 98-99.

[17] Id. at 117.

[18] Rollo, pp. 12-30.

[19] Id. at 20.

[20] Id. at 23.

[21] Id. at 62-70.

[22] Article 1236 reads: Whoever pays for the debt of another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor.

[23] Sec. 2 of Rule 68 of the Rules of Civil Procedures reads: "If upon the trial in such action the court shall find the facts set forth in the complaint to be true, it shall ascertain the amount due to the plaintiff upon the mortgage debt or obligation, including interest and other charges as approved by the court, and costs, and shall render judgment for the sum so found due and order that the same be paid to the court or to the judgment obligee within a period of not less than ninety (90) days nor more than one hundred twenty (120) days from the entry of the judgment, and that in default of such payment the property shall be sold at public auction to satisfy the judgment." (emphasis and underscoring supplied)

[24] Sec. 2 of Rule 36 of the Rules of Civil Procedure reads: "If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final order shall forthwith be entered by the clerk in the book of entries of judgments. The date of finality of the judgment or final order shall be deemed to be the date of its entry. The record shall contain the dispositive part of the judgment or final order and shall be signed by the clerk, with a certificate that such judgment or final order has become final and executory." (emphasis and underscoring supplied)

[25] Rosales v. Suba, G.R. No. 137792, August 12, 2003, 408 SCRA 664, 671.

[26] CA rollo, pp. 89-90.

[27] Article 2208 of the Civil Code reads: In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) x x x x;

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3) x x x x;

(4) x x x x;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

(6) x x x x;

(7) x x x x;

(8) x x x x;

(9) x x x x;

(10) x x x x;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

x x x x.

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