

JOSEPH TYPINGCO, PETITIONER, VS. LINA WONG LIM, JERRY SYCHINGHO, JACKSON SYCHINGHO, JOHNSON SYCHINGHO, AND FAR EAST BANK AND TRUST COMPANY, RESPONDENTS.

G.R. No. 181232. October 23, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Sometime between December 1996 and February 1997, respondents-spouses Lina Wong Lim (Lina) and Johnson Sychingho (Johnson) borrowed from petitioner Joseph Typingco (Typingco) the sum of US\$600,000 which was later restructured, payable on or before December 31, 1997, under a promissory note executed by the spouses and co-signed by their children-co-respondents Jerry Sychingho (Jerry) and Jackson Sychingho (Jackson) as sureties.[1]

Following their default in payment, Lina, Jerry, and Jackson conveyed on January 29, 1998 to Typingco via dacion en pago their house and lot in Greenhills, San Juan (subject property), covered by Transfer Certificate of Title (TCT) No. 6259-R (the title) of the Register of Deeds of San Juan, in the name of Lina and her sons, after first paying respondent Far East Bank and Trust Company (FEBTC) the balance of a promissory note to clear the title of a Real Estate Mortgage annotated thereon in favor of FEBTC.[2]

Typingco's repeated demands for the delivery of the owner's duplicate copy of the title, the last of which was by letter of March 2, 1998,[3] having remained unheeded, he filed a complaint for specific performance and recovery of the title against respondents[4] Sychinghos and FEBTC before the Quezon City Regional Trial Court (RTC).

Respondents Sychinghos averred in the main that it was FEBTC that was unlawfully withholding delivery of the owner's duplicate copy of the title despite full payment of the mortgage loan[5] with it.

FEBTC, which was absorbed after a merger by Bank of the Philippine Islands (BPI), contended that spouses Lina and Johnson had unsettled obligations as sureties for JSY International Philippines, Inc. and J&J Brothers Corporation under Comprehensive Surety Agreements which they had executed authorizing FEBTC to retain and proceed against their properties in its possession; that the Real Estate Mortgage annotated on the title was a continuing security for their present and future obligations; and that Typingco was not a buyer in good faith, he having failed to conduct further inquiry on the status of the subject property given that the mortgage in its favor was annotated on the title.[6]

At the pre-trial, the parties clarified that the subject matter of the case was only 1/3 inchoate portion of the subject property[7] or that pertaining to Lina as co-owner (as the 2/3 belongs to her sons Jerry and Jackson), she being a signatory to the Real Estate Mortgage, along with her sons, as well as to the Comprehensive Surety Agreements, along with her husband, both documents in favor of FEBTC.

By Decision of March 14, 2003,[8] Branch 82 of the Quezon City RTC dismissed the complaint, holding that Typingco was bound by the Real Estate Mortgage in favor of FEBTC not only because the same was duly

annotated on the title, but also because he failed to verify the status of the subject property despite his awareness of the said mortgage.

Typingco's Motion for Reconsideration having been denied by Order dated May 23, 2003,[9] he appealed[10] to the Court of Appeals. The appellate court dismissed Typingco's appeal by Decision of September 13, 2007,[11] it sustaining for the most part the position of BPI.

Typingco's Motion for Reconsideration having been denied by Resolution dated January 10, 2008,[12] he (hereafter petitioner) filed the present Petition for Review on Certiorari.

Petitioner argues that the copy of the Real Estate Mortgage submitted by BPI (Exhibit "10") is inadmissible, the witness who identified it having no personal knowledge of its existence and due execution, hence, should not be considered annotated on the title; and that there was no evidence that respondents Sychinghos had other unpaid obligations with FEBTC for which the title should continue to stand as security.[13]

By Manifestation of June 12, 2008, individual respondents informed the Court of Johnson's passing during the proceedings in the trial court and their waiving of the filing of a Comment to the present petition, given that their position before the trial and appellate courts[14] is now also petitioner's.

BPI, on the other hand, maintains its position before the trial court, adding that the due execution and authenticity of Exhibit "10," a notarized instrument, need not be proved unlike that of a private writing.[15]

The petition is impressed with merit.

Dacion en pago is the delivery and transmission of ownership of another thing by the debtor to the creditor as an accepted equivalent of performance of an obligation. It partakes of the nature of a contract of sale, where the thing offered by the debtor is the object of the contract, while the debt is the consideration or purchase price.[16]

The pivotal issue is thus whether respondent Sychinghos had the right to sell or convey title to the subject property at the time of the dacion en pago. The Court finds in the affirmative.

There having been no previous foreclosure of the Real Estate Mortgage on the subject property, respondent Sychinghos' ownership thereof remained intact. Indeed, a mortgage does not affect the ownership of the property as it is nothing more than a lien thereon serving as security for a debt. The mortgagee does not acquire title to the mortgaged real estate unless he purchases it at a public auction, and it is not redeemed within the period provided for by the Rules of Court.[17] This applies a fortiori to the present case where only 1/3, not the whole, of the subject property was actually encumbered to FEBTC.

With respect to whatever amount Lina and her sons may still owe BPI (then FEBTC), the Court finds that this is not a concern of petitioner as he is not a party to the loan documents covering it. Since petitioner agreed to the full extinguishment of respondents spouses' then outstanding obligation in view of the unconditional conveyance to him of the subject property,[18] there is a perfected and enforceable dacion en pago. He should thus enjoy full entitlement to the subject property.

The question of whether the subject property stands as a continuing security for any outstanding obligations of Lina and her sons to BPI (then FEBTC) should not detain the Court any further. Surrender of the certificate of title will not impair any existing mortgage on the subject property. It is an elementary principle in civil law that a real estate mortgage subsists notwithstanding changes in ownership, and all subsequent purchasers of the property must respect the mortgage.[19]

Finally, while the remedy of petitioner is to file a petition in court, following Presidential Decree No. 1529, to compel then FEBTC (now BPI) to surrender the owner's duplicate copy of the title to the Register of Deeds of San

Juan to facilitate the issuance of a new title in his name,[20] the Court deems his action for specific performance and recovery of the title as substantial compliance with the prescribed procedure. To require him to institute a new action seeking essentially the same relief would be to encourage endless litigations and multiplicity of suits - an end abhorrent to the proper administration of justice.

WHEREFORE, the challenged Decision of the Court of Appeals is REVERSED and SET ASIDE. Bank of the Philippine Islands, to which Far East Bank and Trust Company was merged, is ordered to surrender the owner's duplicate copy of TCT No. 6259-R to the Register of Deeds of San Juan, Metro Manila in order to process the issuance of a new title over the subject property in the name of petitioner, Joseph Typingco.

SO ORDERED.

Quisumbing, (Chairperson), Carpio[*], Brion, and Abad, JJ., concur.

[*] Additional member per Special Order No. 757 dated October 12, 2009.

[1] Records, p. 8.

[2] Id. at 3-4; 10-12.

[3] Id. at 14.

[4] Id. at 2-7.

[5] Id. at 27-31.

[6] Id. at 41-50.

[7] Id. at 134.

[8] Id. at 311-321.

[9] Id. at 340.

[10] Id. at 341.

[11] Penned by Associate Justice Ramon M. Bato, Jr., with the concurrence of Associate Justices Andres B. Reyes, Jr. and Jose C. Mendoza; CA rollo, pp. 72-81.

[12] Id. at 109-110.

[13] Vide Petition, rollo, pp. 22-50.

[14] Id. at 137-139.

[15] Vide Comment of BPI, id. at 143-151.

[16] Vide Aquintey v. Tibong, G.R. No. 166704, December 20, 2006, 511 SCRA 414, 438-439.

[17] Lagrosa v. Court of Appeals, 371 Phil. 225, 240 (1999).

[18] Records, pp. 11-12.

[19] Asuncion v. Evangelista, 375 Phil. 328, 357 (1999).

[20] Section 107 of Presidential Decree No. 1529 provides:

Section 107. Surrender of withheld duplicate certificates. -- Where it is necessary to issue a new certificate of title pursuant to any involuntary instrument which divests the title of the registered owner against his consent or where a voluntary instrument cannot be registered by reason of the refusal or failure of the holder to surrender the owner's duplicate certificate of title, the party in interest may file a petition in court to compel surrender of the same to the Register of Deeds. The court, after hearing, may order the registered owner or any person withholding the duplicate certificate to surrender the same, and direct the entry of a new certificate or memorandum upon such surrender. If the person withholding the duplicate certificate is not amenable to the process of the court, or if for any reason the outstanding owner's duplicate certificate cannot be delivered, the court may order the annulment of the same as well as the issuance of a new certificate of title in lieu thereof. Such new certificate and all duplicates thereof shall contain a memorandum of the annulment of the outstanding duplicate. (Emphasis and underscoring supplied.)

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