

ELIZABETH DEL CARMEN, PETITIONER, VS. SPOUSES RESTITUTO SABORDO AND MIMA MAHILUM-SABORDO, RESPONDENTS.

G.R. No. 181723. August 11, 2014

Ponente: PERALTA, J.

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PERALTA, J.:

This treats of the petition for review on certiorari assailing the Decision[1] and Resolution[2] of the Court of Appeals (CA), dated May 25, 2007 and January 24, 2008, respectively, in CA-G.R. CV No. 75013.

The factual and procedural antecedents of the case are as follows:

Sometime in 1961, the spouses Toribio and Eufrocina Suico (Suico spouses), along with several business partners, entered into a business venture by establishing a rice and corn mill at Mandaue City, Cebu. As part of their capital, they obtained a loan from the Development Bank of the Philippines (DBP), and to secure the said loan, four parcels of land owned by the Suico spouses, denominated as Lots 506, 512, 513 and 514, and another lot owned by their business partner, Juliana Del Rosario, were mortgaged. Subsequently, the Suico spouses and their business partners failed to pay their loan obligations forcing DBP to foreclose the mortgage. After the Suico spouses and their partners failed to redeem the foreclosed properties, DBP consolidated its ownership over the same. Nonetheless, DBP later allowed the Suico spouses and Reginald and Beatriz Flores (Flores spouses), as substitutes for Juliana Del Rosario, to repurchase the subject lots by way of a conditional sale for the sum of P240,571.00. The Suico and Flores spouses were able to pay the downpayment and the first monthly amortization, but no monthly installments were made thereafter. Threatened with the cancellation of the conditional sale, the Suico and Flores spouses sold their rights over the said properties to herein respondents Restituto and Mima Sabordo, subject to the condition that the latter shall pay the balance of the sale price. On September 3, 1974, respondents and the Suico and Flores spouses executed a supplemental agreement whereby they affirmed that what was actually sold to respondents were Lots 512 and 513, while Lots 506 and 514 were given to them as usufructuaries. DBP approved the sale of rights of the Suico and Flores spouses in favor of herein respondents. Subsequently, respondents were able to repurchase the foreclosed properties of the Suico and Flores spouses.

On September 13, 1976, respondent Restituto Sabordo (Restituto) filed with the then Court of First Instance of Negros Occidental an original action for declaratory relief with damages and prayer for a writ of preliminary injunction raising the issue of whether or not the Suico spouses have the right to recover from respondents Lots 506 and 514.

In its Decision dated December 17, 1986, the Regional Trial Court (RTC) of San Carlos City, Negros Occidental, ruled in favor of the Suico spouses directing that the latter have until August 31, 1987 within which to redeem or buy back from respondents Lots 506 and 514.

On appeal, the CA, in its Decision[3] in CA-G.R. CV No. 13785, dated April 24, 1990, modified the RTC decision by giving the Suico spouses until October 31, 1990 within which to exercise their option to purchase or redeem the subject lots from respondents by paying the sum of P127,500.00. The dispositive portion of the CA

Decision reads as follows:

x x x x

For reasons given, judgment is hereby rendered modifying the dispositive portion of [the] decision of the lower court to read:

1) The defendants-appellees are granted up to October 31, 1990 within which to exercise their option to purchase from the plaintiff-appellant Restituto Sabordo and Mima Mahilum Lot No. 506, covered by Transfer Certificate of Title No. T-102598 and Lot No. 514, covered by Transfer Certificate of Title No. T-102599, both of Escalante Cadastre, Negros Occidental by reimbursing or paying to the plaintiff the sum of ONE HUNDRED TWENTY-SEVEN THOUSAND FIVE HUNDRED PESOS (P127,500.00);

2) Within said period, the defendants-appellees shall continue to have usufructuary rights on the coconut trees on Lots Nos. 506 and 514, Escalante Cadastre, Negros Occidental;

3) The Writ of Preliminary Injunction dated August 12, 1977 shall be effective until defendants-appellees shall have exercised their option to purchase within said period by paying or reimbursing to the plaintiff-appellant the aforesaid amount.

No pronouncement as to costs.

SO ORDERED.[4]

In a Resolution[5] dated February 13, 1991, the CA granted the Suico spouses an additional period of 90 days from notice within which to exercise their option to purchase or redeem the disputed lots.

In the meantime, Toribio Suico (Toribio) died leaving his widow, Eufrocina, and several others, including herein petitioner, as legal heirs. Later, they discovered that respondents mortgaged Lots 506 and 514 with Republic Planters Bank (RPB) as security for a loan which, subsequently, became delinquent.

Thereafter, claiming that they are ready with the payment of P127,500.00, but alleging that they cannot determine as to whom such payment shall be made, petitioner and her co-heirs filed a Complaint[6] with the RTC of San Carlos City, Negros Occidental seeking to compel herein respondents and RPB to interplead and litigate between themselves their respective interests on the abovementioned sum of money. The Complaint also prayed that respondents be directed to substitute Lots 506 and 514 with other real estate properties as collateral for their outstanding obligation with RPB and that the latter be ordered to accept the substitute collateral and release the mortgage on Lots 506 and 514. Upon filing of their complaint, the heirs of Toribio deposited the amount of P127,500.00 with the RTC of San Carlos City, Branch 59.

Respondents filed their Answer[7] with Counterclaim praying for the dismissal of the above Complaint on the grounds that (1) the action for interpleader was improper since RPB is not laying any claim on the sum of P127,500.00; (2) that the period within which the complainants are allowed to purchase Lots 506 and 514 had already expired; (3) that there was no valid consignment, and (4) that the case is barred by *litis pendencia* or *res judicata*.

On the other hand, RPB filed a Motion to Dismiss the subject Complaint on the ground that petitioner and her co-heirs had no valid cause of action and that they have no primary legal right which is enforceable and binding against RPB.

On December 5, 2001, the RTC rendered judgment, dismissing the Complaint of petitioner and her co-heirs for lack of merit.[8] Respondents' Counterclaim was likewise dismissed.

Petitioner and her co-heirs filed an appeal with the CA contending that the judicial deposit or consignment of the amount of P127,500.00 was valid and binding and produced the effect of payment of the purchase price of the subject lots.

In its assailed Decision, the CA denied the above appeal for lack of merit and affirmed the disputed RTC Decision.

Petitioner and her co-heirs filed a Motion for Reconsideration,[9] but it was likewise denied by the CA.

Hence, the present petition for review on certiorari with a lone Assignment of Error, to wit:

THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE LOWER COURT WHICH HELD THAT THE JUDICIAL DEPOSIT OF P127,500.00 MADE BY THE SUICOS WITH THE CLERK OF COURT OF THE RTC, SAN CARLOS CITY, IN COMPLIANCE WITH THE FINAL AND EXECUTORY DECISION OF THE COURT OF APPEALS IN CA-G.R. CV-13785 WAS NOT VALID.[10]

Petitioner's main contention is that the consignment which she and her co-heirs made was a judicial deposit based on a final judgment and, as such, does not require compliance with the requirements of Articles 1256[11] and 1257[12] of the Civil Code.

The petition lacks merit.

At the outset, the Court quotes with approval the discussion of the CA regarding the definition and nature of consignment, to wit:

... consignment [is] the act of depositing the thing due with the court or judicial authorities whenever the creditor cannot accept or refuses to accept payment, and it generally requires a prior tender of payment. It should be distinguished from tender of payment which is the manifestation by the debtor to the creditor of his desire to comply with his obligation, with the offer of immediate performance. Tender is the antecedent of consignment, that is, an act preparatory to the consignment, which is the principal, and from which are derived the immediate consequences which the debtor desires or seeks to obtain. Tender of payment may be extrajudicial, while consignment is necessarily judicial, and the priority of the first is the attempt to make a private settlement before proceeding to the solemnities of consignment. Tender and consignment, where validly made, produces the effect of payment and extinguishes the obligation.[13]

In the case of *Arzaga v. Rumbaoa*,[14] which was cited by petitioner in support of his contention, this Court ruled that the deposit made with the court by the plaintiff-appellee in the said case is considered a valid payment of the amount adjudged, even without a prior tender of payment thereof to the defendants-appellants, because the plaintiff-appellee, upon making such deposit, expressly petitioned the court that the defendants-appellees be notified to receive the tender of payment. This Court held that while “[t]he deposit, by itself alone, may not have been sufficient, but with the express terms of the petition, there was full and complete offer of payment made directly to defendants-appellants.”[15] In the instant case, however, petitioner and her co-heirs, upon making the deposit with the RTC, did not ask the trial court that respondents be notified to receive the amount that they have deposited. In fact, there was no tender of payment. Instead, what petitioner and her co-heirs prayed for is that respondents and RPB be directed to interplead with one another to determine their alleged respective rights over the consigned amount; that respondents be likewise directed to substitute the subject lots with other real properties as collateral for their loan with RPB and that RPB be also directed to accept the substitute real properties as collateral for the said loan. Nonetheless, the trial court correctly ruled that interpleader is not the proper remedy because RPB did not make any claim whatsoever over the amount consigned by petitioner and her co-heirs with the court.

In the cases of *Del Rosario v. Sandico*[16] and *Salvante v. Cruz*,[17] likewise cited as authority by petitioner, this

Court held that, for a consignment or deposit with the court of an amount due on a judgment to be considered as payment, there must be prior tender to the judgment creditor who refuses to accept it. The same principle was reiterated in the later case of *Pabugais v. Sahijwani*.^[18] As stated above, tender of payment involves a positive and unconditional act by the obligor of offering legal tender currency as payment to the obligee for the former's obligation and demanding that the latter accept the same.^[19] In the instant case, the Court finds no cogent reason to depart from the findings of the CA and the RTC that petitioner and her co-heirs failed to make a prior valid tender of payment to respondents.

It is settled that compliance with the requisites of a valid consignment is mandatory.^[20] Failure to comply strictly with any of the requisites will render the consignment void. One of these requisites is a valid prior tender of payment.^[21]

Under Article 1256, the only instances where prior tender of payment is excused are: (1) when the creditor is absent or unknown, or does not appear at the place of payment; (2) when the creditor is incapacitated to receive the payment at the time it is due; (3) when, without just cause, the creditor refuses to give a receipt; (4) when two or more persons claim the same right to collect; and (5) when the title of the obligation has been lost. None of these instances are present in the instant case. Hence, the fact that the subject lots are in danger of being foreclosed does not excuse petitioner and her co-heirs from tendering payment to respondents, as directed by the court.

WHEREFORE, the instant petition is DENIED. The Decision of the Court of Appeals, dated May 25, 2007, and its Resolution dated January 24, 2008, both in CA-G.R. CV No. 75013, are AFFIRMED.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Villarama, Jr.,[*] Mendoza, and Leonen, JJ., concur.

September 4, 2014

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on ___August 11, 2014___ a Decision, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on September 4, 2014 at 2:15 p.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[*] Designated Acting Member, per Special Order No. 1691 dated May 22, 2014, in view of the vacancy in the Third Division.

[1] Penned by Associate Justice Francisco P. Acosta, with Associate Justices Arsenio J. Magpale and Agustin S. Dizon, concurring; Annex "F" to Petition, rollo, pp. 70-79.

[2] Penned by Associate Justice Francisco P. Acosta, with Associate Justices Pampio A. Abarintos and Amy C.

Lazaro-Javier, concurring; Annex “H” to Petition, id. at 84-85.

[3] Annex “A” to Petition, id. at 21-46.

[4] Id. at 44-45.

[5] Annex “B” to Petition, id. at 47-48.

[6] Annex “C” to Petition, id. at 49-52.

[7] Annex “D” to Petition, id. at 53-56.

[8] See RTC Decision, Annex “E” to Petition, id. at 57-69.

[9] Annex “G” to Petition, id. at 80-83.

[10] Rollo, p. 16.

[11] Art. 1256. If the creditor to whom tender of payment has been made refuses without just cause to accept it, the debtor shall be released from responsibility by the consignation of the thing or sum due. x x x

[12] Art. 1257. In order that the consignation of the thing due may release the obligor, it must first be announced to the persons interested in the fulfillment of the obligation.

The consignation shall be ineffectual if it is not made strictly in consonance with the provisions which regulate payment.

[13] Annex “F” to Petition, rollo, p. 77, citing *Banco Filipino Savings and Mortgage Bank v. Diaz*, 526 Phil. 222 (2006). (Emphasis ours; citations and underscoring omitted)

[14] 91 Phil. 499 (1952).

[15] Id. at 502.

[16] 85 Phil. 170, 178 (1949).

[17] 88 Phil. 236 (1951).

[18] G.R. No. 156846, February 23, 2004, 423 SCRA 596.

[19] *Roman Catholic Bishop of Malolos, Inc. v. IAC*, G.R. No. 72110, November 16, 1990, 191 SCRA 411, 419.

[20] *Dalton v. FGR Realty and Development Corporation*, G.R. No. 172577, January 19, 2011, 640 SCRA 92, 102; *Manuel v. Court of Appeals*, 276 Phil. 657, 664 (1991); *Soco v. Militante*, G.R. No. L-58961, June 28, 1983, 123 SCRA 160, 173.

[21] Id.

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