

P.E. DOMINGO & CO., INC., PRIMITIVO E. DOMINGO, ROSARIO R. DOMINGO, LORETTA D. PANIS, AMADOR R. DOMINGO, ISIDORO M. DOMINGO, DANILO R. DOMINGO AND IRENEO R. DOMINGO, PETITIONERS...

G.R. No. 74211. March 25, 1988

Ponente: CRUZ, J.

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CRUZ, J.:

These two cases have been consolidated because they involve the same question, to wit, the correct interpretation of Rule 32, Section 2, of the Rules of Court, on trial with assessors.

G.R. No. 76299 is an appeal by certiorari under Rule 45 from a decision of the Court of Appeals sustaining that right while G.R. No. 74211 is a petition for certiorari under Rule 65 questioning a decision of the trial court denying such right. Both cases raise the corollary question of whether or not the right had been seasonably invoked.

These cases arose from certain loans obtained by P.E. Domingo and Co. and several other persons (hereafter referred to as Domingo) from the GSIS which were secured with real estate mortgages and other collaterals.[1] Upon alleged default in the payment of these obligations, the mortgages were foreclosed and the mortgaged properties sold to the GSIS at public auction.[2] Domingo protested the foreclosure sale and, before the GSIS could consolidate title over the properties sold, filed complaints in the regional trial courts of Manila, Quezon City and Pasig for the annulment of the same.[3] Domingo also moved for trial with assessors in all three cases. The motion was granted by the trial judge in Pasig but denied by Judge Maximo Savellano in Manila[4] and Judge Remigio E. Zari in Quezon City.[5] Their orders are the subject now of these petitions.

Rule 32, Section 2, of the Rules of Court reads in full as follows:

"Rights of parties to have assessors, and manner of selecting them. - Either party to an action may, twenty (20) days or more before the trial, apply in writing to the judge for assessors to sit in the trial. Upon the filing of such application, the judge shall direct that assessors shall be provided, and that the parties forthwith appear before him for the selection of the assessors. If the parties cannot agree on the choice of two assessors from the list provided for in the preceding section, the assessors shall be selected from the aforesaid list in the following manner, in the presence of the judge or clerk; the plaintiff shall strike out from the list one name; then the defendant may strike out another, and so on, alternately, the parties shall strike out names, until but two remain on the list. The remaining two shall be the assessors to sit in the trial; but if one or both of them are disqualified by law to sit as assessors, then the judge or clerk shall draw one name or more as the case may be, by lot, from those stricken out, and the person or persons thus drawn shall act as assessors, unless disqualified by law, in which case the vacancy shall be filled by lot, as above provided."

A mere perusal of the above provision clearly shows that trial with assessors may be demanded as a matter of right by any of the parties. As long as the conditions for the enjoyment of the right have been satisfied, it may not

be denied or withheld by the judge, who has no discretion on the matter. The reason is the mandatory language of the rule which unequivocally says that "upon filing of such application, the judge shall direct that the assessors shall be provided x x x."

In his monumental work on the Rules of Court, Chief Justice Moran had the following to say on trial with assessors:

"Trial with the aid of assessors is a specie of jury trial, when a demand therefor is made by the parties. By the terms of section 2, assessors are only appointed when one or both of the parties shall apply therefor in writing to the judge. The parties may therefore waive their rights to assessors and if they do not demand the appointment, they, of course, waive their rights thereto. The necessity or advisability of having assessors is left to the discretion of the parties. Either or both may exercise the right to have assessors appointed.

"But when the demand is made for the appointment of assessors in the form prescribed by law, has the judge any discretion to deny it? Section 2, as taken from section 154 of Act 190, provides that "upon filing of such application, the judge shall direct that the assessors be provided" It would be difficult to draw a law in which the terms could be made more mandatory. The Legislature said that the court shall direct etc. . . , it did not intend that the judge might, could or should appoint; the Legislature, considering the purpose of the law, meant exactly what it said -- that the judge upon proper application shall appoint.[6]

Speaking of the same matter, the Court has held in no uncertain terms:

"x x x the right thus granted to the parties to be judged by assessors is absolute, and the duty imposed upon the justice of the peace is likewise mandatory. Once the petition in writing has been filed by any of the parties, it is the duty of the justice of the peace to grant it, and to proceed to the selection of the assessors in the manner prescribed. x x x The respondents could not be deprived of a substantial right granted them by law."[7]

It is argued by the GSIS that Domingo has not justified its motion for trial with assessors and gives no reason why it should be granted, confining itself to merely invoking the rule. That is enough; nothing else is needed. This substantive right has only to be invoked to be granted. That is the clear mandate of the law, for as we stressed in *Pagkatipunan v. Bautista*, this right is "absolute and mandatory."

Trial with assessors is available where questions of fact are involved as assessors can help the judge in the determination of this kind of questions. Concededly, they have nothing to do with the interpretation of legal questions. The GSIS is not exactly correct when it says that the only questions to be settled in the case at bar are legal in nature for there are a number of factual issues that have to be examined and resolved. Among these are whether or not the debts of Domingo were already due at the time of the mortgage foreclosure and, if so, whether or not they have been fully liquidated with the application thereto of the proceeds of the auction sales.[8]

The rule says that the motion for trial with assessors should be filed "twenty (20) days or more before the trial." signifying that it may be denied if filed after such period. This was the reason for the denial of the motion in the cases cited by the GSIS, to wit, *Manaois v. de la Cruz*,[9] where the motion was filed one day before the trial, and *Suntay v. Munoz*,[10] where the motion was filed when the trial was already in progress. As the respondent court found, however, this period was not exceeded in G.R. No. 76299, thus:

"Applied to the instant case, the pre-trial of this case was terminated last October 3, 1985. The petitioners' Motion for Trial with Assessors was dated and filed October 14, 1985. The case was initially set for trial on the merits on December 3, 1985, almost two (2) months before the initial hearing date. The Rules of Court require that the written application for assessors be made at least twenty (20) days before the trial. Thus, the motion for the appointment of assessors was seasonably filed."[11]

This factual finding is conclusive upon the Court, absent any clear showing that it was rendered with abuse of

discretion or without any substantial basis.

No similar inquiry has been made in G.R. No. 74211 because this has not been remanded to the Court of Appeals. While a like remand would normally be the appropriate step to take, we feel that the Court should instead investigate the question directly, considering the consolidation of the two cases and in order to terminate them without further delay. After all, the records are before us.

Accordingly, we make the following finding on the seasonableness of the motion.

It appears that as early as in its pre-trial brief[12] filed on March 21, 1985, Domingo had already indicated that "they will want a trial with assessors under Rule 32" of the Rules of Court. This intention was later formalized in a motion for trial with assessors filed by Domingo on September 16, 1985. The GSIS contends that the motion was filed late because the date set for the first hearing was September 20, 1985, or only four days ahead; hence, under the Rule, the motion should be, as it was, denied. The Court does not agree.

It seems to us that if the spirit of the Rule is to be consulted, the motion should be granted. There is obviously no intention to delay, to begin with, as there evidently are certain factual issues that in the view of one of the parties are better resolved with the help of assessors. Moreover, the application for trial with assessors was made as early as March 21, 1985, in the pre-trial brief filed by Domingo. Although not made in the form of a formal motion, it arguably could have sufficed as there is nothing in the rule that calls for such formal motion. At any rate, such a motion was submitted on September 16, 1985, and it cannot be said to have been filed tardily, for in fact no hearing was held within 20 days after that date or, for that matter, up to now. The delay noted in the last two cases cited earlier is not present here for the trial in the case at bar has not yet begun.

The 20-day period fixed by the Rule is intended to enable the parties to agree on the choice of the arbitrators or for the selection to be made in the manner prescribed therein where the parties cannot agree. During that period, the assessors picked are to be so informed and summoned to appear at the trial to assist the judge in the ascertainment of the factual issues unless for good cause they are excused from doing so. The purposes of the period are not violated here for there is sufficient time for the appointment of the assessors in accordance with the said rule.

In sum, the Court reaffirms its consistent holding that the right to trial with assessors cannot be withheld as long as it has been invoked in time and it is shown that there are questions of fact to be resolved. We also hold that, as found by the Court of Appeals in G.R. No. 76299 and as we have found in G.R. No. 74211, the motions for trial with assessors were filed on time.

As long as it is provided for in the Rules of Court, the right to trial with assessors cannot be withheld except only for the most compelling justification. Any right, whatever its source, be it the Constitution or only a statute or - in this case - the Rules of Court, is protected by the due process clause and so cannot be denied the person entitled thereto without good reason. We have held for example, that denial of the right to preliminary investigation, as guaranteed by law, constitutes a denial of due process.[13] It is no different here.

ACCORDINGLY, the petition in G.R. No. 76299 is DENIED and the petition in G.R. No. 74211 is GRANTED. Trial by assessors is hereby directed in Civil Case No. 84-24604 of the Regional Trial Court of Manila and Civil Case No. Q-41671 of the Regional Trial Court of Quezon City. The temporary restraining order dated June 4, 1986, in G.R. No. 74211 is LIFTED. No pronouncement as to costs.

SO ORDERED.

Teehankee, C.J., Narvasa, Gancayco, and Grino-Aquino, JJ., concur.

[1] Rollo, p. 27 (G.R. No. 76299).

[2] Ibid., pp. 27-28.

[3] Id., p. 28.

[4] Rollo, p. 104 (G.R. No. 76299).

[5] Rollo, pp. 117-118 (G.R. No. 74211).

[6] 2 Moran, Comments on the Rules of Court 153-154, 1963 ed., quoting *Berbari v. Concepcion*, 40 Phil. 320.

[7] *Colegio de San Jose v. Sison*, 56 Phil. 344, quoted in *Pagkatipunan v. Bautista*, 108 SCRA 569.

[8] Rollo, p. 121 (G.R. No. 76299).

[9] 19 SCRA 395.

[10] CA-G.R. No. SP-00201, June 15, 1971.

[11] Rollo, p. 110.

[12] Rollo, p. 90.

[13] *Patanao v. Enage*, 121 SCRA 228.

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