

SPECIAL ELEVENTH DIVISION

[CA-G.R. CV NO. 96929, February 13, 2015]

**LAENNA T. JAVIER, SECY T. JAVIER, AND FRANK T. JAVIER,
PLAINTIFFS-APPELLEES, VS. BHAGWAN C. RAMNANI, THE
REGISTER OF DEEDS-BINANGONAN, RIZAL AND THE OFFICE OF
THE CLERK OF COURT AND EX-OFFICIO SHERIFF, RTC,
ANTIPOLO CITY, DEFENDANTS-APPELLANTS.**

DECISION

SADANG, J.:

This is an ordinary appeal from the Decision^[1] dated October 29, 2010 of the Regional Trial Court, Branch 73, Antipolo City in Civil Case No. 04-7416, for annulment of mortgage, injunction, and damages.

Antecedents of the Appeal

On November 26, 2004, plaintiffs-appellees Laenna T. Javier, Secy T. Javier, and Frank T. Javier (hereafter, appellees) filed a Complaint against defendant-appellant Bhagwan C. Ramnani (hereafter, appellant) seeking the annulment of the Real Estate Mortgage (REM) dated October 4, 2000 which was allegedly executed by appellees' parents, Leonardo and Ester Macaria Javier, over a 1,182-square meter lot covered by Original Certificate of Title (OCT) No. 10850 (hereafter referred to as Lot 1). Appellees alleged that: on March 10, 2000, they and their mother, Ester, and sister Ma. Veronica Javier-Tolentino (Veronica), executed a deed of extrajudicial settlement of Leonardo's estate; one of the lots distributed was Lot 1 which they divided, thus: 120 square meters to Veronica, 257 square meters to Laenna, 208 square meters to Secy, and 597 square meters to Frank and Ester;^[2] in October 2004, they received a notice of extrajudicial foreclosure of a mortgage constituted over Lot 1; upon verification with the Register of Deeds they learned that Lot 1 was purportedly mortgaged on October 4, 2000 to appellant by Veronica on the strength of a Special Power of Attorney (SPA) dated October 3, 2000 issued in her favor by their parents; the REM and SPA are void because Leonardo was already dead when said documents were executed on October 4, 2000 and appellant knew such fact.^[3]

In his Answer, appellant alleged that Leonardo's death was hidden from him when the mortgage was executed in his favor. He claimed that he was a mortgagee in good faith and had he known of Leonardo's death, he would not have agreed to the transaction. He averred that the auction sale of Lot 1 will not result in injustice to appellees because they knew that their parents had authorized Veronica to mortgage the property as they signed the SPA as witnesses.^[4]

At the trial, appellees Laenna Javier, Veronica Tolentino, and Frank Javier testified to prove their allegations.

According to Laenna, she learned of the mortgage only when she received the Notice of Extrajudicial Sale. She does not know how Lot 1 was mortgaged on October 4, 2000 because their father died on October 8, 1999 and she cannot recall granting a SPA to anyone, including Veronica. She admitted having signed the SPA as a witness^[5] but claimed that she was forced to do so in order to help Veronica because Ramnani threatened to have Veronica imprisoned for non-payment of her debts.^[6]

Veronica testified that she came to know appellant while she was working in their family gas station (Petron) business. She had rediscounting transactions with appellant whereby she issued post-dated checks as security for cash that she obtained from him. When the business faced difficulties and needed more funds, she sought the help of appellant but he required her to put up a collateral to "back up" her checks. She wanted to mortgage the lot occupied by the gas station (Petron lot) as collateral but she could not do so because it was leased to Petron Corporation and the title was in Petron's possession. Thus, she turned over the title of Lot 1 to appellant on the understanding that upon the release of the title of the Petron lot he will return the title of Lot 1 to her. Later, the Petron lot was mortgaged to the Rural Bank of Cardona, thus, she and appellant had a verbal agreement whereby appellant would help her settle her mortgage with said bank and sell the property and the proceeds will be applied to her obligations to him and he will also give her P500,000.00. However, these agreements were not complied with. Instead, the Petron lot was redeemed by Filidian Bank, appellant's bank, and the title of Lot 1 was not returned to her. She later learned that appellant bought the Petron lot, which is now registered in his name under TCT No. 607251. Appellant knew of Leonardo's death because he sent flowers during the wake.^[7]

Frank testified that he was present in one of the conversations of Veronica and appellant. He heard appellant tell Veronica that he was still looking for a buyer of the Petron lot and once it is sold for P20 million he will deduct the amount of the mortgage on Lot 1. To Frank's understanding, appellant was acting as an agent in the sale of the Petron lot and would then offset the mortgage on Lot 1. They later discovered that appellant bought the Petron lot.^[8]

Appellant claimed that: he did not know that Leonardo was already dead when Veronica went to his office to negotiate the mortgage; Veronica brought to him the SPA and other loan documents but he was the one who prepared the REM;^[9] he learned of the death of Leonardo only when he filed the foreclosure proceedings; he filed a criminal case of falsification of public documents against Veronica for mortgaging the property even after her father's death.^[10]

On October 29, 2010, the RTC rendered the appealed Decision. The *fallo* reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against defendant Bhagwan C. Ramnani. The writ of preliminary injunction issued by this court on April 15, 2005 is hereby made permanent.

The Register of Deeds of Binangonan, Rizal is hereby directed to cancel the Real Estate Mortgage dated October 4, 2000 of Notary Public for Pasig City Joel T. Pelicano with Doc. No. 203, page 29, Book XX, series of

2000 under Entry No. 6545 over OCT No. 10850 inscribed on October 10, 2000 in the Memorandum of Encumbrances of the Register of Deeds of Binangonan, Rizal by virtue of this Decision.

No pronouncement as to costs.

SO ORDERED.^[11]

Hence, this appeal which raises this issue: "Whether or not the court erred in concluding that there was indeed a *dacion en pago* resulting on (sic) the extinction or extinguishment of the obligation of the plaintiffs (appellees) under a real estate mortgage".^[12]

Ruling

There are two lots involved in this case. The first is Lot 1 which has an area of 1,182 square meters and is covered by OCT No. 10850 in the name of Leonardo and Ester Javier. This lot is the subject of the SPA^[13] executed by the spouses Leonardo and Ester Javier in favor of Veronica as well as the October 4, 2000 REM executed by Veronica in favor of appellant. This is the REM sought to be annulled by appellees in this case. Lot 1 is also the subject of the Notice of Extra-Judicial Sale,^[14] dated October 18, 2004.

The second lot is the lot covered by TCT No. 601840^[15] (Lot 2-C-2) with an area of 1,700 square meters. It is registered in the name of Leonardo Javier. This lot is the object of the Deed of Absolute Sale,^[16] dated November 22, 2002, executed by Veronica and appellees in favor of appellant for a consideration of P20,400,000.00. There is no documentary evidence on record that this lot was ever mortgaged, either to appellant or to a bank.

The RTC upheld the validity of the REM and the SPA. It ruled that appellee Laenna is an educated person, a physician, and although she was aware that her father was already dead she knowingly signed the SPA which was to be used to mortgage the property. And even if she had the noble intention of helping Veronica, Laenna cannot be allowed to extricate herself from the consequences of the SPA. The RTC ruled that appellees are precluded from denying the SPA and REM based on the principle of estoppel by deed. Both the appellant and the appellees do not take issue with this finding of the RTC.

The RTC further ruled that although appellees did not raise the issue of *dacion en pago* in their pleadings, they presented evidence thereon to which appellant did not object and said evidence shows that there was a *dacion en pago* which resulted in the payment of Veronica's obligations to appellant. The RTC noted appellant's admission that he bought Lot 2-C-2 on November 22, 2002 for P20 Million but the purchase price was not actually paid to Veronica but applied to her loan with Cardona Rural Bank to release the mortgage.

Appellant contends that the case cited by the RTC, *Vda. De Jayme v. Court of Appeals*,^[17] is not applicable because, in contrast to said case, the registered owner in this case is already dead and the mortgagors did not have full disposal of the property and the validity of the mortgage in *Vda. De Jayme* was challenged on the

ground of forgery. Citing appellees' testimony, appellant argues that "based on the afore-quoted testimony, the fact that the property was later sold to defendant-appellant after he redeemed it from the Cardona Rural Bank there was no agreement that the mortgaged property which is covered by OCT No. 1085019 (sic) automatically paid as concluded by the court a quo". Appellant further contends that appellees did not allege *dacion* as a cause of action and raised it as a mere afterthought because they failed to prove their original cause of action.^[18]

In their Appellees' Brief, appellees do not argue on the basis of the ruling of the RTC. Instead, citing *PNB Madecor v. Uy*,^[19] they contend that there was legal compensation or set-off between the parties. They argue that by virtue of the Deed of Absolute Sale, dated November 22, 2002, there was an agreement whereby the proceeds of the sale of the Petron lot will be used to set-off the outstanding obligation of Veronica and appellant admitted that he did not actually give the purchase price of P20,400,000.00 to Veronica.^[20]

There is no merit in the contention of appellant that *dacion en pago* should not have been considered because it was not raised by appellees as a cause of action. Section 5, Rule 10 of the Rules of Court allows a complaint which states no cause of action to be cured either by evidence presented without objection or, in the event of an objection sustained by the court, by an amendment of the complaint with leave of court.^[21] Considering that, as found by the RTC, the appellees presented evidence to prove *dacion en pago* and appellant did not object thereto, said defense may be appreciated.

We shall now resolve the main issue.

Dacion en pago is the transmission of the ownership of a thing by the debtor to the creditor as an accepted equivalent of the performance of an 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 essential 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 as the purchase price. In any case, common consent is an essential prerequisite, be it sale or innovation to have the effect of totally extinguishing the debt or obligation.^[22]

To be valid, a *dacion en pago* must comply with these requisites: (1) There must be the performance of the prestation in lieu of payment (*animo solvendi*) which may consist in the delivery of a corporeal thing or a real right or a credit against a third person; (2) There must be some difference between the prestation due and that which is given in substitution (*aliud pro alio*); (3) There must be an agreement between the creditor and debtor that the obligation is immediately extinguished by reason of the performance of a prestation different from that due.^[23]

The pertinent testimony of Veronica reads, thus: