

## TWELFTH DIVISION

[ CA-G.R. CV No. 95106, May 05, 2014 ]

**ANDRES SUPERABLE, PLAINTIFF-APPELLANT, VS. SPOUSES PASTOR AND AURORA ROBLES & SPOUSES BERNARDO AND ELVIRA CORDOVIZ, DEFENDANTS-APPELLEES.**

### D E C I S I O N

**PAREDES, J.:**

#### THE CASE

THIS IS ON THE APPEAL filed by plaintiff-appellant Andres Superable (*plaintiff-appellant*) assailing the Decision<sup>[1]</sup> dated December 17, 2009 of the Regional Trial Court (RTC), Branch 274, Parañaque City, in Civil Case No. 02-0435 for Annulment of Extra-judicial Foreclosure Sale and Title with Damages.

#### THE ANTECEDENTS

Plaintiff-appellant filed a Complaint<sup>2</sup> alleging that: Defendants-appellees spouses Pastor and Aurora Robles (*spouses Robles*) were the registered owners of two (2) residential lots and the house standing thereon located at No. 9 Peace Street, Multinational Village, Parañaque City, and covered by Transfer Certificates of Title (TCTs) Nos. 38396<sup>[3]</sup> and 105735<sup>[4]</sup> (*subject properties*). Spouses Robles represented that the subject properties were free from any liens and encumbrances, and sold it to plaintiff-appellant for Four Million Five Hundred Thousand Pesos (P4,500,000.00); the purchase is evidenced by a Contract to Sell<sup>5</sup> dated September 16, 1997.

Upon full payment of the purchase price on July 20, 1998, plaintiff-appellant and his family occupied the subject properties and introduced some improvements amounting to Five Hundred Thousand Pesos (P500,000.00). Consequently, spouses Robles executed a Deed of Absolute Sale<sup>[6]</sup> (*Deed*) dated July 15, 1998, albeit the Deed is not notarized, and spouses Robles failed to deliver a copy of the titles to plaintiff-appellant.

When plaintiff-appellant requested for a copy of the titles from the Register of Deeds of Parañaque City, he discovered a mortgage lien annotated on the titles on August 27, 1997. When plaintiff-appellant confronted spouses Robles about the mortgage lien<sup>[7]</sup>, the latter admitted their misrepresentation and promised to settle the problem with the mortgagee, defendant-appellee spouses Bernardo and Elvira Cordoviz (*spouses Cordoviz*).

Plaintiff-appellant was able to secure, thru spouses Robles, a Certification<sup>[8]</sup> dated September 17, 1998, stating that spouses Cordoviz will not foreclose the subject properties. However, unknown to plaintiff-appellant, at the time spouses Cordoviz issued the Certification, they had already foreclosed the subject properties on

February 3, 1998. This fact is apparent from the Affidavit of Consolidation<sup>[9]</sup> executed by spouses Cordoviz on October 22, 2001. Plaintiff-appellant was made to believe that the mortgage was still subsisting but that spouses Robles would pay the balance of their obligation amounting to P1,000,000.00 out of a total indebtedness of P3,500,000.00 to spouses Cordoviz. When spouses Cordoviz foreclosed the mortgage, they surreptitiously indicated that spouses Robles were indebted to them for the principal amount of P4,375,000.00 as stated in the Certificate of Sale<sup>[10]</sup>, which was more than the true balance of indebtedness of P1,500,000.00 since spouses Robles already paid P2,000,000.00. On January 31, 2000, spouses Cordoviz were issued a Certificate of Sale<sup>[11]</sup> over the subject properties.

In their Answer<sup>[12]</sup>, spouses Robles alleged that: On February 22, 1994, Pastor Robles, without the knowledge of his wife, Aurora Robles, secured a loan of P1,000,000.00, payable in three (3) years, or from April 1994 to April 1997, from Luzon Development Bank; the subject properties were used as security for the loan. Without waiting for the expiration of the three (3) year period, Pastor Robles accepted the assistance offered by Mrs. Beth De Leon, and agreed to the buy-out of the loan from Luzon Development Bank from the funds provided by the financiers, spouses Cordoviz, at a lower repayment interest; the latter were named as the new mortgagees.

It was only in August 1997 that Pastor Robles informed his wife of the mortgage in favor of spouses Cordoviz; Aurora Robles was then made to sign the mortgage contract in blank against her will. The amount of the loan was subsequently filled-in with the sum of P2,000,000.00 (*should be P3,500,000.00*). Pastor Robles trusted Mrs. Beth De Leon completely that he guaranteed it safe for his wife to sign the blank document.

In September 1997, Pastor sold the subject properties to plaintiff-appellant on installment, which was subsequently paid by the latter in full on July 20, 1998. Pastor Robles executed a Deed of Absolute Sale but failed to deliver the titles over the subject properties because of the spouses Cordoviz's unreasonable refusal to release the titles despite their payment of more than P2,300,000.00. Spouses Cordoviz claimed that spouses Robles failed to settle the loan, which had by now ballooned to P3,800,000.00. Meanwhile, spouses Cordoviz executed an undertaking not to foreclose the subject properties pending full payment by spouses Robles.

On July 15, 1999, spouses Robles, thru counsel, appealed<sup>[13]</sup> for the settlement of the obligation in exchange for the release of the two (2) titles in the (additional) sum of P1,500,000.00, but the spouses Cordoviz declined<sup>[14]</sup>, reiterating that the obligation had ballooned to P3,800,000.00 as of August 20, 1999.

As cross-claim<sup>[15]</sup> spouses Robles alleged that: a few months into his loan with Luzon Development Bank, Mrs. Beth De Leon advised Pastor Robles that spouses Cordoviz had P2,000,000.00 available for him to take out his loan of P1,200,000.00 with Luzon Development Bank, at lower interest rates. He agreed to the scheme. An advance interest charge of P200,000.00 was paid to spouses Cordoviz, service fee of P100,000.00 was given to Mrs. Beth De Leon, and P50,000.00 as processing fee for a new title<sup>[16]</sup>, for a total of P1,550,000.00. Of the amount of P2,000,000.00 in the promissory note, spouses Robles had already paid P2,300,000.00, but spouses Cordoviz wanted an additional P3,800,000.00 to fully pay their obligation to them. To buy peace, spouses Robles tendered P1,500,000.00 in addition to the previous

payment of P2,300,000.00, which spouses Cordoviz still refused, according to the latter's counsel.

Spouses Cordoviz, in their Answer<sup>[17]</sup>, claimed that: The complaint states no cause of action against them since plaintiff-appellant's cause of action is against spouses Robles. Spouses Cordoviz are not privy to the contract of sale between plaintiff-appellant and spouses Robles. Besides, spouses Robles had constructive knowledge of the mortgage as it was duly registered with the Register of Deeds of Cavite. The stipulations embodied in the contract of sale do not affect or bind spouses Cordoviz. The remedy of the plaintiff-appellant is to proceed against spouses Robles and not to seek the annulment of the foreclosure and the titles acquired by spouses Cordoviz after the lapse of the redemption period. The Certification issued by spouses Cordoviz is merely the grant of a grace period to settle the mortgage indebtedness. The principal contract was not invalidated by the Certification and therefore, the mortgage contract subsists. The mortgage lapsed on February 27, 1998 while the Certification was executed only on September 17, 1998, or seven (7) months after the lapse of the mortgage. Spouses Cordoviz could have foreclosed the subject properties after February 27, 1998 but they did not and, in fact, foreclosed the subject properties only on January 31, 2000. The Certificate of Sale was issued on February 7, 2000 and the titles were registered in their names only on October 12, 2000, while the Affidavit of Consolidation was issued on October 22, 2001. Besides, the tenor of the Certification was that spouses Cordoviz will not foreclose the subject properties if spouses Robles are able to pay the loan in full. Therefore, the Certification did not result in the absolute waiver of the right to foreclose but merely a suspension of the exercise of such right.

At pre-trial, and as contained in the Pre-Trial Order<sup>[18]</sup>, the parties admitted the following:

1. Both defendants (*appellees*) Cordoviz and Robles admit that plaintiff (*appellant*) bought the subject property from defendant (*appellee*) [s]pouses Robles;
2. Both defendants (*appellees*) Cordoviz and Robles admit that plaintiff (*appellant*) already paid in full the purchase price of the subject property to defendant (*appellee*) [s]pouses Robles;
3. Both defendants (*appellees*) Cordoviz and Robles admit that plaintiff (*appellant*) and his family have been in actual physical possession of the subject property since July 20, 1998;
4. Both plaintiff (*appellant*) and defendants (*appellees*) spouses Robles admit that the [s]ps. Robles entered into a contract of sale over the subject parcels of land with the plaintiff (*appellant*) on September 15, 1997 without informing the [s]ps. Cordoviz;
5. Plaintiff (*appellant*) admit[s] that at the time the [s]ps. Robles entered into a contract of sale over the subject parcels of land with the plaintiff (*appellant*), they did not inform the plaintiff (*appellant*) that the said parcels of land were mortgaged to[, ] and that the original titles thereof were in the possession of[, ] the [s]ps. Cordoviz;

6. Both plaintiff (*appellant*) and defendant (*appellee*) Robles admit that on September 17, 1998 when the Certification was issued, the six-month period stipulated on (*sic*) the Real Estate Mortgage had already lapsed;
7. Both plaintiff (*appellant*) and defendant (*appellee*) Robles admit that the certification dated September 17, 1998 does not contain nor does it mention the name of the plaintiff (*appellant*);
8. Both plaintiff (*appellant*) and defendant (*appellee*) Robles admit that the actual foreclosure was made on January 31, 2000;
9. Both plaintiff (*appellant*) and defendant (*appellee*) Robles admit that the certificate of sale was issued to the [s]ps. Cordoviz on February 31, 2000;
10. Both plaintiff (*appellant*) and defendant (*appellee*) Robles admit that the certificate of sale was registered with the Office of the Registry of Deeds of Parañaque City on October 12, 2000;
11. Both plaintiff (*appellant*) and defendant (*appellee*) Robles admit that the [s]ps. Robles failed to redeem the subject parcels of land from the [s]ps. Cordoviz from October 12, 2000 until October 12, 2001;
12. Both plaintiff (*appellant*) and defendant (*appellee*) Robles admit that the plaintiff (*appellant*) paid the purchase price for the subject parcels of land without seeing the original titles thereto;
13. Both plaintiff (*appellant*) and defendant (*appellee*) Robles admit that the Deed of Absolute Sale executed by the [s]ps. Robles in favor of the plaintiff (*appellant*) is not in a public instrument and the [s]ps. Cordoviz are not parties thereto[.]

Trial proceeded thereafter.

Plaintiff-appellant's testimony<sup>[19]</sup> reiterated the allegations in the Complaint, and added that: He retired from the Philippine National Police as a three-star General on November 30, 1997, and used his retirement money, which is a product of his 36 years of service, to purchase the subject properties. Upon full payment of the purchase price on July 20, 1998, plaintiff-appellant and his family occupied the subject properties but they vacated sometime in 2003 to avoid further humiliation and trouble. He is now renting a house in Parañaque City. His monthly pension is not even enough to pay the rental and he merely relies on the monthly stipend sent by his children to pay rents.

For their part, Engineer Bernardo Cordoviz (*Engr. Cordoviz*) testified<sup>[20]</sup> that: Sometime in 1997, Mrs. Beth De Leon, a family friend, referred spouses Robles to them in connection with the redemption of the subject properties, which was mortgaged with the Luzon Development Bank for a loan of P1,500,000.00. Spouses Robles asked for a loan of P2,000,000.00 from spouses Cordoviz, who granted a loan of P3,500,000.00, inclusive of interest, payable within six (6) months. The subject properties, which were redeemed from Luzon Development Bank, were used as a collateral to guaranty the loan extended to spouses Robles.

For failure of spouses Robles to pay the loan in full, spouses Cordoviz foreclosed the subject properties sometime in February 1998. Subsequently, spouses Cordoviz met with plaintiff-appellant who inquired if the subject properties were indeed mortgaged to them and telling them, in turn, that spouses Robles had sold the subject properties to him. Spouses Cordoviz had two (2) other meetings with plaintiff-appellant and in one of these, plaintiff-appellant offered his two (2) shares in a golf club worth P1,700,000.00 to redeem the titles, but Engr. Cordoviz refused. To give spouses Robles more time within which to settle their indebtedness, spouses Cordoviz issued a Certification dated September 17, 1998, stating that they would not foreclose the subject properties. Despite the extension of time to settle, spouses Robles failed to do so.

Sometime in January 2000, Engr. Cordoviz proceeded with the foreclosure proceedings and an auction was conducted; spouses Cordoviz were proclaimed the highest bidder at P4,500,000.00. A Certificate of Sale was issued on February 7, 2000 and which sale was registered on October 12, 2000. Spouses Robles failed to redeem the subject properties within the one-year redemption period, thus, ownership over the subject properties was consolidated in the name of spouses Cordoviz on November 5, 2001; consequently, TCT Nos. 150337<sup>[21]</sup> and 150338<sup>[22]</sup> were issued in their name. When spouses Cordoviz filed a petition for the issuance of a Writ of Possession, plaintiff-appellant did not object and voluntarily vacated the premises. However, plaintiff-appellant appealed the decision granting the writ of possession, but the appeal was dismissed by the Court of Appeals in its Decision<sup>[23]</sup> dated February 3, 2003. Plaintiff-appellant elevated the Decision of the Court of Appeals to the Supreme Court which affirmed the CA Decision.

Atty. Ricardo De Leon, Sr.<sup>[24]</sup> (*Atty. De Leon*) corroborated the testimony of Engr. Cordoviz.

Another witness for spouses Cordoviz, Mrs. Consolacion De Leon<sup>[25]</sup> (Mrs. De Leon), testified that: She was introduced to spouses Robles by Manny Granados, Manager of Luzon Development Bank. Manny Granados asked her to help spouses Robles to settle their obligation with the bank. She requested spouses Cordoviz to extend a loan of P2,000,000.00 to spouses Robles. Spouses Cordoviz agreed and the P2,000,000.00 was used to pay the loan of spouses Robles with Luzon Development Bank. The loan to spouses Cordoviz is payable in six (6) months, or from December 1995 to June 1996. Deductions on the loan were: (1) P200,000.00 representing two (2) months' advance interest; (2) P100,000.00 service charge as her commission; (3) P50,000.00 as processing fee for the issuance of a new title<sup>[26]</sup>. At the time, the real estate mortgage was not registered or annotated in the titles at the request of spouses Robles. Aside from the two (2) months' advance payment, spouses Robles also paid spouses Cordoviz the amount of P100,000.00 on March 8, 1996. When spouses Robles failed to pay in June 1996, they asked for an extension of six (6) months, which spouses Cordoviz granted. For failure of spouses Robles to settle their obligation, spouses Cordoviz registered the Real Estate Mortgage (REM) with the Register of Deeds and a mortgage lien was annotated on the titles. After the annotation on August 27, 1997, spouses Robles paid spouses Cordoviz, on two(2) separate occasions, a total of P2,000,000.00. They were also given six (6) months from the annotation, or until February 1998, to fully settle.

Although the Spouses Robles borrowed only P2,000,000.00 from spouses Cordoviz, she was aware that in the REM, the principal amount stated was P3,500,000.00. The