

## FIRST DIVISION

[ G.R. No. 246995, January 22, 2020 ]

**BLAS C. BRITANIA, PETITIONER, VS. HON. LILIA MERCEDES ENCARNACION A. GEPTY IN HER CAPACITY AS PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 75, VALENZUELA CITY, AND MELBA C. PANGANIBAN, RESPONDENTS.**

### DECISION

**LAZARO-JAVIER, J.:**

#### The Case

This petition for review assails the Decision<sup>[1]</sup> dated May 8, 2019 of the Court of Appeals in CA-G.R. SP No. 150820 entitled "*Blas C. Britania V. Hon. Lilia Mercedes Encarnacion A. Gepty, et al.*," which affirmed the following issuances of the trial court:

- 1) Order<sup>[2]</sup> dated November 18, 2016, denying Blas Britania's written motion to examine judgment debtor Melba Panganiban and his oral motion to cite Melba Panganiban for indirect contempt of court; and
- 2) Order<sup>[3]</sup> dated March 30, 2017, denying Britania's motion for reconsideration.

#### Antecedents

Under Complaint<sup>[4]</sup> dated November 16, 2012, petitioner Blas Britania (Britania) initiated an action for judicial foreclosure of mortgage against respondent Melba Panganiban (Panganiban).

Britania basically alleged:

On July 13, 2011, he and Panganiban executed an agreement captioned "*Magkasanib na Kasunduan*" where he agreed to loan Panganiban the sum of P1,500,000.00 with interest of P100,000.00, payable in monthly installments of P40,000.00 starting August 2011 until fully paid. The loan was secured by a 120-square meter property, which Panganiban was paying on installment to a certain Florencia Francisco .<sup>[5]</sup>

Panganiban failed to comply with the first agreement so they executed a second "*Magkasanib na Kasunduan*" on February 14, 2012 wherein a new payment scheme was laid out for the unpaid sum of P1,500,000.00. The same property secured the loan. Panganiban possessed the property situated at No.1469 Anneth II, Tañada

Subdivision, General T. De Leon, Valenzuela City. Despite repeated demands, Panganiban continuously refused to pay her obligation.<sup>[6]</sup>

The case was docketed as Civil Case No. 216-V-12 and raffled to the Regional Trial Court, Branch 75, Valenzuela City, presided by respondent judge Hon. Lilia Mercedes Encarnacion Gepty.

In her Verified Answer <sup>[7]</sup> dated December 17, 2012, Panganiban essentially averred:

She was engaged in the business of buy-and-sell. Because of the nature of her business, she needed a large amount of capital. She repeatedly borrowed from Britania at six percent (6%) monthly interest until her loans ballooned to P1,000,000.00. She regularly paid her loans, including the stipulated interest. In fact, she already paid a total of P309,000.00.<sup>[8]</sup>

Her son Rommel Panganiban got sick and eventually died on January 18, 2011. The money intended to pay Britania was used for her son's hospital expenses. She was constrained to issue a Banco de Oro check for P1,500,000.00 to Britania who promised he would not encash the check so long as she would continue paying her loans.<sup>[9]</sup>

But Britania reneged on his promise and encashed the check which consequently got dishonored. On July 13, 2011, she and Britania went to a notary public and executed a "*Magkasanib na Kasunduan*." She then continued to pay her loans to Britania. On February 14, 2012, they again went to a notary public and executed yet another "*Magkasanib na Kasunduan*," which she signed despite her reservations.<sup>[10]</sup>

The contract to sell which she and Florencia Francisco entered into on the 120-square meter lot did not prosper because of her financial difficulties. Britania cannot foreclose on Francisco's property because the latter was not privy to the loan agreement between her and Britania . <sup>[11]</sup>

After due proceedings, the trial court rendered its Decision<sup>[12]</sup> dated June 30, 2015 denying the complaint for judicial foreclosure, albeit granting Britania 's monetary claims, thus:

WHEREFORE, premises considered, the instant complaint for judicial foreclosure is hereby DENIED, for lack of merit. However, the defendant is hereby ordered to pay the plaintiff the amount of Php1,193,000.00 plus interest at 6% per annum, reckoned from November 16, 2012 until the finality of this Decision. Thereafter, the principal amount due as adjusted by interest shall likewise earn interest at 6% per annum until fully paid, and attorney's fees in the amount of Php 30,000.00 plus costs of suit.

SO ORDERED.<sup>[13]</sup>

Upon finality of the aforesaid decision, a corresponding Writ of Execution<sup>[14]</sup> dated January 29, 2016 was issued.

Per Notice of Sheriffs Sale on Execution (Personal Property/ies)<sup>[15]</sup> dated April 6, 2016, the following personal properties of Panganiban were levied on:

2pcs Marmol Bench, 1pc Wood Sofa, 1pc Center Table, 1pc Corner table, 1pc Dining Table and 6pcs Chairs, 1pc Wood Cabinet, 1pc Stand Fan, 1pc Comer Cabinet, 2pcs Flower Vase, 2pcs Oven Toaster, 1pc Rice Cooker, 1pc Bread Toaster, 1pc Mirror, 1pc Glass Cabinet, 1pc Refrigerator, 2pcs Washing Machine, 1pc Turbo Broiler and 2pcs Wall Painting.

The Sheriffs Return<sup>[16]</sup> dated April 20, 2016 reported that an execution sale was held on April 14, 2016 and Britania offered the highest bid of P15,000.00 for the entire bulk of the levied personal properties.

After the sale, Britania filed his Motion to Examine Judgment Debtor Melba C. Panganiban<sup>[17]</sup> dated April 15, 2016. According to Britania, the 120-square-meter property was fraudulently transferred to Panganiban's sister and then to another person a few days before the trial court's decision was issued.

The motion was set for hearing on June 7, 2016, during which, Panganiban did not appear. For this reason, Britania moved todte Panganiban in indirect contempt of court. By Order <sup>[18]</sup> dated June 7, 2016, the trial court ordered Panganiban to comment thereon within ten (10) days from notice.

In her Comment<sup>[19]</sup> dated June 28, 2016, Panganiban stated in the main: the 120-square-meter parcel of land was not included in the trial court's decision denying the complaint for judicial foreclosure. She had always observed the rules and never meddled in or interrupted its enforcement. She opted not to oppose or comment on Britania's motion to examine her. The trial court may make a ruling purely on the basis of Britania 's motion. Because of the tragedy that struck her and her family, they could not get themselves to confront the case head on.

By Reply <sup>[20]</sup> dated August 23, 2016, Britania reiterated the statements in his motion to examine Panganiban.

Under Order<sup>[21]</sup> dated November 18, 2016, the trial court denied Britania's oral motion for indirect contempt and motion to examine Panganiban, thus:

Finding the arguments raised by the plaintiff to be without merit, the Motion to Examine Judgment Debtor Melba C. Panganiban is hereby DENIED.

Herein plaintiff anchored its motion on the ground that defendant, fraudulently transferred her house and lot to her sister and thereafter, the latter to another person after the Court's Decision was rendered on June 30, 2015. Granting arguendo that the same is true, said allegation is subject of another cause of action, cancellation of title in the name of the new owner and/or cancellation of sale, which this Court cannot take cognizance thereof for lack of jurisdiction.

While it is true that a judgment debtor may be questioned pursuant to the cited provisions of the Rules of Court by the plaintiff, the

circumstances attendant in the instant case does not fall within said provisions as a cause of action allegedly arose after the Court's rendition of judgment in this case.

In view of the foregoing, the subject motion to cite defendant Melba C. Panganiban in indirect contempt of court as well as the motion to examine said judgment debtor are both DENIED for lack of merit.

SO ORDERED.<sup>[22]</sup>

Britania moved for reconsideration,<sup>[23]</sup> which the trial court denied per second Order<sup>[24]</sup> dated March 30, 2017.

### **Proceedings before the Court of Appeals**

Aggrieved, Britania moved up to the Court of Appeals via an action for *certiorari* and mandamus.<sup>[25]</sup> He faulted the trial court with grave abuse of discretion amounting to lack or excess of jurisdiction for denying his motion to examine and motion to cite Panganiban in indirect contempt. In so doing, the trial court's action allegedly violated his right to examine Panganiban as judgment debtor and ignored the latter's disobedience to the lawful order of the trial court to appear during the hearing.

By its assailed Decision<sup>[26]</sup> dated May 8, 2019, the Court of Appeals affirmed. According to the Court of Appeals, Panganiban's non-appearance during the scheduled hearing on June 7, 2016 did not amount to a contumacious act which may be punished by contempt of court. The trial court properly deemed Panganiban to have waived her right to be heard on Britania's motion to examine her. Further, in denying Britania's motion to examine Panganiban under Section 36, Rule 39 of the Rules of Court, the trial court correctly held that it had no jurisdiction to compel Panganiban to answer for a 120-square-meter property that did not even belong to her and was registered in the name of a third person.

### **The Present Petition**

Britania now invokes this Court's discretionary appellate jurisdiction for affirmative relief via Rule 45 of the Revised Rules of Court. He asserts that Panganiban's non-appearance during the June 7, 2016 hearing was an utter disregard of the trial court's authority, thus, a ground to cite Panganiban for indirect contempt. Further, under Section 36, Rule 39 of the Rules of Court, he had the right to examine Panganiban because the judgment in his favor was not fully satisfied.<sup>[27]</sup>

Panganiban did not file her comment despite the directive under Resolution<sup>[28]</sup> dated July 15, 2019. By Resolution dated January 8, 2020, the Court dispensed with the filing of the comment.

### **Ruling**

Britania mainly argues that Panganiban should be held in indirect contempt for

violating Section 36, Rule 39 of the Rules of Court, which reads:

Sec. 36. Examination of judgment obligor when judgment unsatisfied.

When the return of a writ of execution issued against property of a judgment obligor, or any one of several obligors in the same judgment, shows that the judgment remains unsatisfied, in whole or in part, the judgment obligee, at any time after such return is made, shall be entitled to an order from the court which rendered the said judgment, requiring such judgment obligor to appear and be examined concerning his property and income before such court or before a commissioner appointed by it, at a specified time and place; and proceedings may thereupon be had for the application of the property and income of the judgment obligor towards the satisfaction of the judgment. But no judgment obligor shall be so required to appear before a court or commissioner outside the province or city in which such obligor resides or is found.

The provision applies to cases where the judgment remains unsatisfied and there is a need for the judgment obligor to appear and be examined concerning his or her property and income to determine whether the same may be properly held to satisfy the full judgment amount.<sup>[29]</sup>

The provision speaks of the judgment obligor's property and income only; not those belonging to third persons. For a judgment creditor or purchaser at an execution sale acquires only whatever rights the judgment obligor may have over the property at the time of levy. Thus, if the judgment obligor has no right, title or interest over the levied property, there is nothing for him or her to transfer.<sup>[30]</sup>

Here, in the trial court's final and executory Decision dated June 30, 2015, it categorically held that Panganiban did not validly mortgage the 120-square-meter property to Britania because she did not own in the first place, thus:

Be that as it may, the prayer for the Foreclosure of Mortgage is hereby denied for lack of merit as the property subject matter thereof was not owned by the mortgagor-debtor at the time of the execution of the agreements in this case, whether the first or the second agreement.

x x x

At the time of the execution thereof, the owner of the aforesaid property was one Florencia Francisco. Moreover, even at the time of default and at the time of the filing of this case, the mortgagor-debtor did not own the subject property as evidence was presented (Exhibit "32" Kasunduan dated April 3, 2012) showing that Agreement to Sell has been cancelled on account of the failure of the mortgagor-debtor to pay the monthly amortizations thereon since 2010. Thus, not being the absolute owner of the mmigated property, the same cannot be subject of a valid mortgage.

<sup>[31]</sup>

It is a fundamental principle that a judgment that lapses into finality becomes immutable and unalterable. The primary consequence of this principle is that the judgment may no longer be modified or amended by any court in any manner even