

## FIRST DIVISION

[ G.R. No. 215659, March 19, 2018 ]

**ANALYN DE LOS SANTOS AND SPOUSES RAPHAEL LOPEZ AND  
ANALYN DE LOS SANTOS-LOPEZ, PETITIONERS, V. JOEL  
LUCENIO AND ALL OTHER PERSONS CLAIMING RIGHTS AND  
AUTHORITY UNDER HIM, RESPONDENTS.**

### D E C I S I O N

**DEL CASTILLO, J.:**

A judgment or decision of the appellate court that goes beyond the issues raised before the trial court must be set aside for lack of jurisdiction.<sup>[1]</sup>

Before the Court is a Petition for Review on *Certiorari*<sup>[2]</sup> filed under Rule 45 of the Rules of Court assailing the September 29, 2014 Decision<sup>[3]</sup> and the December 1, 2014 Resolution<sup>[4]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 130384.

***Factual Antecedents***

On October 1, 2010, petitioners Teresita de los Santos (petitioner Teresita) and spouses Anallyn de los Santos-Lopez and Raphael Lopez (petitioner spouses) filed before the Municipal Trial Court (MTC) of Biñan, Laguna, a Complaint<sup>[5]</sup> for Ejectment/Unlawful Detainer with Damages, docketed as Civil Case No. 4086, against respondents Joel Lucenio (respondent Joel) and all persons claiming rights and authority under him.<sup>[6]</sup> Petitioners alleged that, in December 2009, petitioner Teresita lent her name and credit standing in favor of her daughter and son-in-law, petitioner spouses, as an accommodation party thru a Deed of Assignment<sup>[7]</sup> dated August 31, 2010 to enable them to purchase a property from the list of assets for sale by the Government Service Insurance System (GSIS);<sup>[8]</sup> that on January 19, 2010, the GSIS issued a Notice of Approval<sup>[9]</sup> granting petitioner Teresita's application to purchase the property located, at Block 8, Lot 14, Juana I Complex, Biñan, covered by Transfer Certificate of Title (TCT) No. T-129136<sup>[10]</sup> issued under the name of the GSIS;<sup>[11]</sup> that on March 5, 2010, petitioner spouses paid the required deposit in the amount of P87,255.00 and a front end service fee in the amount of P7,852.97;<sup>[12]</sup> that on May 12, 2010, a Deed of Conditional Sale<sup>[13]</sup> was executed by the GSIS over the subject property in favor of petitioner Teresita;<sup>[14]</sup> that despite demand by petitioners, respondent Joel refused to vacate the subject property;<sup>[15]</sup> and that petitioners filed a complaint against respondent Joel before the *Barangay Lupong Tagapamayapa* but the same was unavailing as the parties failed to reach an amicable settlement.<sup>[16]</sup>

In his Answer,<sup>[17]</sup> respondent Joel raised as a defense lack of cause of action. He alleged, that in 1995, his sister obtained a housing loan from the GSIS to purchase

the subject property;<sup>[18]</sup> that his sister has already acquired ownership over the subject property;<sup>[19]</sup> that in 2005, his sister executed in his favor a Deed of Transfer of Rights<sup>[20]</sup> over the subject property;<sup>[21]</sup> that he then availed of the condonation or amnesty program offered by the GSIS for the unpaid amortizations of his sister;<sup>[22]</sup> that he paid the required 10 percent (10%) down payment and applied for the restructuring of the loan;<sup>[23]</sup> that he was not able to pay the amortization due to the failure of the GSIS to recompute the total balance of the loan;<sup>[24]</sup> that he was deprived of due process as the GSIS executed a Deed of Conditional Sale in favor of petitioners without first acting on his offer to purchase the property;<sup>[25]</sup> and that the Deed of Conditional Sale executed by the GSIS in favor of petitioner Teresita was void because the conditional sale in favor of his sister cannot be unilaterally terminated.<sup>[26]</sup>

### ***Ruling of the Municipal Trial Court***

On March 20, 2012, the MTC rendered a Decision<sup>[27]</sup> in favor of petitioners. The Court found that petitioners had a better right over the subject property as they acquired an inchoate right of ownership by virtue of the Deed of Conditional Sale executed by GSIS.<sup>[28]</sup> Thus, the MTC disposed of the case in this wise:

WHEREFORE, in view of the foregoing, Judgment is hereby rendered in favor of [petitioners] and against [respondent Joel], as follows:

1. Ordering the [respondent Joel] and all persons claiming rights under him to immediately vacate the subject property and to peacefully turn over possession of the same to [petitioners];
2. Ordering [respondent Joel] to pay [petitioners] the sum of FIVE THOUSAND PESOS (P5,000.00) per month as reasonable compensation for the continued use and occupation of the premises beginning May 16, 2010 until the line the [respondent Joel] vacates the property; and
3. Ordering [respondent Joel] to pay the amount of TWENTY THOUSAND PESOS (P20,000.00) as and for attorney's fees;
4. Ordering [respondent Joel] to pay the costs of suit.

SO ORDERED.<sup>[29]</sup>

### ***Ruling of the Regional Trial Court***

Respondent Joel appealed the MTC Decision to the Regional Trial Court (RTC).

On February 4, 2013, the RTC rendered a Judgment<sup>[30]</sup> affirming the findings of the MTC that petitioners, as successors-in-interest of GSIS, were legally entitled to the full control and possession of the subject property.<sup>[31]</sup> It pointed out that from the time the Deed of Transfer of Rights was executed on January 20, 2005, respondent Joel never made any payment on the delinquencies.<sup>[32]</sup>

Respondent Joel moved for reconsideration but the RTC denied the same in its May 20, 2013 Order.<sup>[33]</sup>

Thereafter, the RTC issued Orders granting petitioners' Motion for Immediate Execution and Urgent Motion for Issuance of Break Open Order.<sup>[34]</sup>

### ***Ruling of the Court of Appeals***

Unfazed, respondent Joel elevated the matter to the CA via a Petition for Review<sup>[35]</sup> under Rule 42 of the Rules of Court, docketed, as CA-G.R. SP No. 130384.

For the first time, respondent Joel raised, as an issue the alleged failure of the GSIS to comply with the provisions under Republic Act (RA) No. 6552, otherwise known as the Maceda Law. He alleged that his sister's contract had not been cancelled and that she had not received the cash surrender value of the payments made on the subject property.

On September 29, 2014, the CA reversed the ruling of the RTC. The CA dismissed the complaint for unlawful detainer for failure of the GSIS to issue a notarized notice of cancellation and to refund the cash surrender value of the payments made on the subject property.<sup>[36]</sup>

Petitioners moved for reconsideration<sup>[37]</sup> arguing that the CA erred in allowing respondent Joel to change his theory on appeal. In any case, petitioners attached a copy of the notarized cancellation of the contract<sup>[38]</sup> from the GSIS to dispute the allegation of respondent Joel. As to the cash surrender value, petitioners alleged that, under the law, it would be released only upon the retirement of respondent Joel's sister.

On December 1, 2014, the CA issued a Resolution denying petitioners' Motion for Reconsideration for lack of merit. Hence, petitioners filed the instant Petition for Review on Certiorari, raising the following errors:

#### **I.**

THE HONORABLE [CA] ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT ALLOWED RESPONDENT [JOEL] TO CHANGE HIS THEORY FOR THE FIRST TIME IN HIS PETITION FOR REVIEW AND GRANTED THE SAME, THE CHANGE OF THEORY MADE BY RESPONDENT IS PROHIBITED BY THE RULES OF COURT.

#### **II.**

THE HONORABLE [CA] ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT RULED THAT [RA] NO. 6552 COMMONLY KNOWN AS MACEDA LAW APPLIES TO BOTH PARTIES DESPITE THE FACT THAT THE PROVISIONS OF THE MACEDA LAW APPLIES ONLY TO SELLER AND BUYER OF A REAL ESTATE PROPERT[Y]. HEREIN PARTIES ARE BOTH BUYERS OF THE SUBJECT PROPERTY FROM [GSIS].

#### **III.**

ASSUMING ARGUENDO THAT MACEDA LAW APPLIES TO THE PARTIES HEREIN, THE HONORABLE [CA] ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT ALLOWED RESPONDENT [JOEL] TO CHANGE HIS THEORY WHILE TOTALLY DISREGARDING THE DOCUMENTARY PIECES OF EVIDENCE PRESENTED BY PETITIONERS IN RESPONSE,

WHICH IS OFFENSIVE TO THE RULES OF FAIR PLAY, JUSTICE, AND DUE PROCESS.<sup>[39]</sup>

### ***Petitioners' Arguments***

Petitioners contend that the CA erred in allowing respondent Joel to change his theory on appeal as this is prohibited by the Rules of Court and prevailing jurisprudence.<sup>[40]</sup> Petitioners point out that respondent Joel never raised as a defense the non-compliance by GSIS with the Maceda Law before the MTC and the RTC.<sup>[41]</sup> Thus, the CA in considering this on appeal violated petitioners' constitutional right to due process.<sup>[42]</sup> Petitioners further argue that the CA also erred in applying the Maceda Law to the instant case as it is applied only between a real estate seller and a buyer.<sup>[43]</sup> In any case, even if said law applied, the CA still erred in ruling that the GSIS failed to comply with the provisions of the Maceda Law considering that the GSIS sent a notarized letter of cancellation.<sup>[44]</sup> As to the cash surrender value, petitioners claim that respondent Joel failed to show that his sister filed a claim with the GSIS.<sup>[45]</sup>

### ***Respondent's Argument***

Respondents, on the other hand, fault the MTC and the RTC in not taking judicial notice of the Maceda Law in deciding the instant case.<sup>[46]</sup> They maintain that the Maceda Law applies to the instant case and that the conditional sale in favor of respondent Joel's sister remains valid due to the failure of GSIS to return the cash surrender value of the payments made by her on the subject property.<sup>[47]</sup> Accordingly, petitioners have no possessory right over the subject property.<sup>[48]</sup>

### **Our Ruling**

The Petition is meritorious.

Section 15, Rule 44 of the Rules of Court provides:

Section 15. *Questions that may be raised on appeal.* – Whether or not the appellant has filed a motion for new trial in the court below, he may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties.

This provision embodies the settled principle that, on appeal, the parties are not allowed to change their "theory of the case," which is defined in Black's Law Dictionary as:

A comprehensive and orderly mental arrangement of principle and facts, conceived and constructed for the purpose of securing a judgment or decree of a court in favor of a litigant; the particular line of reasoning of either party to a suit, the purpose being to bring together certain facts of the case in a logical sequence and to correlate them in a way that produces in the decision maker's mind a definite result or conclusion favored by the advocate.<sup>[49]</sup>

In other words, an issue not alleged in the complaint nor raised before the trial court cannot be raised for the first time on appeal as this goes against the basic rules of

fair play, justice, and due process.<sup>[50]</sup> In the same way, a defense not pleaded in the answer cannot also be raised for the first time on appeal.<sup>[51]</sup>

In *Peña v. Spouses Tolentino*,<sup>[52]</sup> the Court explained that –

x x x a party cannot change his theory of the case or his cause of action on appeal. This rule affirms that 'courts of justice have no jurisdiction or power to decide a question not in issue.' Thus, a judgment that goes beyond the issues and purports to adjudicate something on which the court did not hear the parties is not only irregular but also extrajudicial and invalid. The legal theory under which the controversy was *heard* and *decided* in the trial court should be the *same* theory under which the *review on appeal* is conducted. Otherwise, prejudice will result to the adverse party. We stress that points of law, theories, issues, and arguments not adequately brought to the attention of the lower court will not be ordinarily considered by a reviewing court, inasmuch as they cannot be raised for the first time on appeal. This would be offensive to the basic rules of fair play, justice, and due process.

In this case, respondent Joel in his Answer<sup>[53]</sup> averred:

7. The subject property was originally awarded to [respondent's] sister, Beulah L. Aguillon (Aguillon, for brevity), by the GSIS through a housing loan. Aguillon's monthly loan amortizations were dutifully deducted through her salary and remitted to GSIS from year 1985 to 2000. xxx

8. Since Aguillon's place of work was in Bacolod City, she requested [respondent's] family to stay in the subject property. In 1994, the GSIS informed Aguillon, through defendant, that she was delinquent on her payment of amortizations. To prove payments and reconcile with her records, Aguillon requested GSIS (Manila and Iloilo branches) to furnish her with copies of remittances of amortization. She even went to Manila to request statement of payment/remittance but to no avail. Later on, defendant would do the following up with GSIS Manila regarding the request for issuance of statement of remittance which efforts suffered the same fate as Aguillon. xxx

9. Burdened by the continued inaction of GSIS, Aguillon executed a Deed of Transfer of Rights in favor of [respondent] which was approved by the former. [Respondent] then availed of condonation/amnesty of whatever unpaid amortization the former owner of the subject property incurred after paying ten (10%) percent of the computed balance subject to proper computations of the total remittance made by Aguillon. xxx

10. [Respondent] paid the ten (10%) percent down payment and requested anew for the proper computation of the total remittance made by Aguillon in order to determine the correct and proper balance payable. Like the previous ones, GSIS failed to address the concern of [respondent]. xxx

11. On May 16, 2010, [respondent] was shocked when [petitioners] went to his house and informed him that they had bought the subject property from GSIS.