

THIRD DIVISION

[G.R. No. 198434, February 29, 2016]

**HEIRS OF LEANDRO NATIVIDAD AND JULIANA V. NATIVIDAD,
PETITIONERS, VS. JUANA MAURICIO-NATIVIDAD, AND SPOUSES
JEAN NATIVIDAD CRUZ AND JERRY CRUZ, RESPONDENTS.**

D E C I S I O N

PERALTA, J.:

Challenged in the present petition for review on *certiorari* are the Decision^[1] and Resolution^[2] of the Court of Appeals (CA), dated February 7, 2011 and August 25, 2011, respectively, in CA-G.R. CV No. 92840. The assailed CA Decision modified the Decision of the Regional Trial Court. (RTC) of San Mateo, Rizal, Branch 75, in Civil Case No. 1637-02-SM, while the CA Resolution denied petitioners' motion for reconsideration.

The present petition arose from an action for specific performance and/or recovery of sum of money filed against herein respondents by the spouses Leandro Natividad (*Leandro*) and Juliana Natividad (*Juliana*), who are the predecessors of herein petitioners.

In their Complaint, Leandro and Juliana alleged that sometime in 1974, Sergio Natividad (*Sergio*), husband of respondent Juana Mauricio-Natividad (*Juana*) and father of respondent Jean Natividad-Cruz (*Jean*), obtained a loan from the Development Bank of the Philippines (DBP). As security for the loan, Sergio mortgaged two parcels of land, one of which is co-owned and registered in his name and that of his siblings namely, Leandro, Domingo and Adoracion. This property is covered by Original Certificate of Title (OCT) No. 5980. Sergio's siblings executed a Special Power of Attorney authorizing him to mortgage the said property. The other mortgaged parcel of land, covered by OCT No. 10271, was registered in the name of Sergio and Juana. Subsequently, Sergio died without being able to pay his obligations with DBP. Since the loan was nearing its maturity and the mortgaged properties were in danger of being foreclosed, Leandro paid Sergio's loan obligations. Considering that respondents were unable to reimburse Leandro for the advances he made in Sergio's favor, respondents agreed that Sergio's share in the lot which he co-owned with his siblings and the other parcel of land in the name of Sergio and Juana, shall be assigned in favor of Leandro and Juliana. Leandro's and Sergio's brother, Domingo, was tasked to facilitate the transfer of ownership of the subject properties in favor of Leandro and Juliana. However, Domingo died without being able to cause such transfer. Subsequently, despite demands and several follow-ups made by petitioners, respondents failed and refused to honor their undertaking.

Respondents filed their Answer denying the allegations in the complaint and raising the following defenses: (1) respondents are not parties to the contract between

Sergio and DBP; (2) there is neither verbal nor written agreement between petitioners and respondents that the latter shall reimburse whatever payment was made by the former or their predecessor-in-interest; (3) Jean was only a minor during the execution of the alleged agreement and is not a party thereto; (4) that whatever liability or obligation of respondents is already barred by prescription, laches and estoppel; (5) that the complaint states no cause of action as respondents are not duty-bound to reimburse whatever alleged payments were made by petitioners; and (6) there is no contract between the parties to the effect that respondents are under obligation to transfer ownership in petitioners' favor as reimbursement for the alleged payments made by petitioners to DBP.

Respondents waived their right to present evidence and they merely filed their memorandum. Also, during pendency of the trial, Leandro died and was substituted by his heirs, herein petitioners.

On November 4, 2008, the RTC rendered its Decision in favor of petitioners, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Defendants Juana Mauricio [Vda.] de Natividad and Jean Natividad-Cruz are ordered to effect the transfer of title in OCT No. 5980 with respect to the undivided share of the late Sergio Natividad; and in OCT No. 10271 both of the Registry of Deeds of the Province of Rizal in favor of plaintiff Juliana [Vda.] de Natividad and the Heirs of the late Leandro Natividad.

2. Defendants to pay jointly and severally, attorney's fees in the sum of Thirty Thousand Pesos (P30,000.00); and cost of suit.

SO ORDERED. ^[3]

Aggrieved by the RTC Decision, respondents filed an Appeal with the CA.

On February 7, 2011, the CA promulgated its questioned Decision, disposing as follows:

WHEREFORE, the appeal is **PARTLY GRANTED**. The Decision dated November 4, 2008 is hereby "**MODIFIED**" in that defendants-appellants Juana Mauricio-Natividad and Jean Natividad-Cruz are ordered instead to reimburse plaintiffs-appellees Juliana Natividad and the heirs of the late Leandro Natividad the amount of P162,514.88 representing the amount of the loan obligation paid to the Development Bank of the Philippines, plus legal interest of 12% per annum computed from June 23, 2001 until finality of the judgment, the total amount of which shall be to the extent only of defendants-appellants' successional rights in the mortgaged properties and Juana's conjugal share in [the] property covered by OCT No. 10271. The award of attorney's fees and cost of suit are **AFFIRMED**.

SO ORDERED.^[4]

Petitioners filed a Motion 'for Partial Reconsideration, while respondents filed their own Motion for Reconsideration, both of which, however, were denied by the CA in its assailed Resolution dated August 25, 2011.

Hence, the instant petition based on the following grounds:

I. WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS' RULING THAT THE VERBAL AGREEMENT TO CONVEY THE PROPERTY SHARES OF SERGIO NATIVIDAD IN THE PAYMENT OF HIS OBLIGATION IS COVERED BY THE STATUTE OF FRAUDS DESPITE THE FACT THAT IT HAS BEEN PARTIALLY EXECUTED, IS CONTRARY TO EXISTING JURISPRUDENCE.

II. WITH DUE RESPECT THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE INTEREST ON THE UNPAID LOAN OBLIGATION SHOULD BE IMPOSED ONLY ON JUNE 23, 2001, DATE OF THE DEMAND FOR PAYMENT INSTEAD OF SEPTEMBER 23, 1994, WHEN THE PARTIES VERBALLY AGREED TO CONVEY THEIR PROPERTY RIGHTS WITH THE EXECUTION OF THE EXTRAJUDICIAL SETTLEMENT OF ESTATE OF SERGIO NATIVIDAD.^[5]

Petitioners, insist that there was a verbal agreement between respondents and Leandro, their predecessor-in-interest, wherein the subject properties shall be assigned to the latter as reimbursement for the payments he made in Sergio's favor. To support this contention, petitioners relied heavily on the Extrajudicial Settlement Among Heirs, which was executed by respondents to prove that there was indeed such an agreement and that such a Settlement is evidence of the partial execution of the said agreement. The provisions of the said Settlement are as follows:

EXTRAJUDICIAL SETTLEMENT AMONG HEIRS

KNOW ALL MEN BY THESE PRESENTS:

This EXTRAJUDICIAL SETTLEMENT, made and entered into by and among:

JUAN M. NATIVIDAD, widow; JEAN N. CRUZ, married to JERRY CRUZ; JOSELITO M. NATIVIDAD, single, all of legal age, Filipino citizens, and residents of Malanday, San Mateo, Rizal

WITNESSETH

That the above-named parties, is the legitimate wife and children and sole heirs of the deceased SERGIO NATIVIDAD, who died in San Mateo, Rizal on May 31, 1981;

That the said deceased, at the time of his death, left certain real estate properties located at San Mateo, Rizal, and Montalban, Rizal, more particularly described as follows:

- a. A whole portion of a parcel of land (Plan Psu-295655, L.R. Case No. Q-29, L.R.C. Record No. N-295 _____, situated in the Barrio of Malanday, Municipality of San Mateo, Province of Rizal, containing an area of TWO HUNDRED EIGHT (208) SQUARE METERS, more or less, and covered by OCT NO. 10271.
- b. A one-fourth (1/4) share in the parcel of land situated in Guinayang, San Mateo, Rizal, containing an area of 2,742 square meters, Covered by OCT No. 10493.
- c. A one-fourth (1/4) share in the parcel of land situated in San Jose, Montalban, Rizal, containing an area of 4,775 square meters, and covered by OCT No. ON-403.
- d. A one-fourth (1/4) share in the parcel of land situated in Cambal, San Mateo, Rizal, containing an area of 13,456 square meters, and covered by OCT No. 5980.

That no other personal properties are involved in this extrajudicial settlement.

That to the best knowledge and information of the parties hereto, the said deceased left certain obligations amounting to P175,000.00 representing loan obligations with the Development Bank of the Philippines.

That a notice of this extrajudicial settlement had been published once a week for three consecutive weeks in _____ a newspaper of general circulation in _____, as certified by the said newspaper hereto attached as Annex "A";

That the parties hereto being all of legal age and with full civil capacity to contract, hereby by these presents, agree to divide and adjudicate, as they hereby divide and adjudicate, among themselves the above-described real estate property in equal shares and interest.

IN WITNESS WHEREOF, the parties have signed this document on this 2nd day of September, 1994 in San Mateo, Rizal, Philippines.

x x x^[6]

After a careful reading of the abovequoted Extrajudicial Settlement Among Heirs, the Court agrees with the CA that there is nothing in the said document which would indicate that respondents agreed to the effect that the subject properties shall be

transferred in the name of Leandro as reimbursement for his payment of Sergio's loan obligations with the DBP. On the contrary, the second to the last paragraph of the said Settlement clearly shows that herein respondents, as heirs of Sergio, have divided the subject properties exclusively among themselves.

There is no competent evidence to prove the verbal agreement being claimed by respondents. Aside from the subject Extrajudicial Settlement Among Heirs, the self-serving claims of Leandro on the witness stand, as well as the cash voucher,^[7] which supposedly represented payment of P8,000.00 given to Atty. Domingo Natividad for the expenses in transferring the title of the subject properties in Leandro's favor, would hardly count as competent evidence in the eyes of the law. Respondents' claim of the existence of a verbal agreement between them, on one hand, and petitioners' predecessors-in-interest, on the other, remains to be mere allegation. It is an age-old rule in civil cases that he who alleges a fact has the burden of proving it and a mere allegation is not evidence.^[8]

In relation to petitioners' contention that the subject verbal agreement actually existed, they-reiterate their contention that the conveyance of the subject properties in their favor is not covered by the Statute of Frauds because they claim that respondents' execution of the Extrajudicial Settlement Among Heirs constitutes partial execution of their alleged agreement.

The Court does not agree.

Suffice it to say that there is no partial execution of any contract, whatsoever, because petitioners failed to prove, in the first place, that there was a verbal agreement that was entered into.

Even granting that such an agreement existed, the CA did not commit any error in ruling that the assignment of the shares of Sergio in the subject properties in petitioners' favor as payment of Sergio's obligation cannot be enforced if there is no written contract to such effect. Under the Statute of Frauds^[9], an agreement to convey real properties shall be unenforceable by action in the absence of a written note or memorandum thereof and subscribed by the party charged or by his agent. As earlier discussed, the pieces of evidence presented by petitioners, consisting of respondents' acknowledgment of Sergio's loan obligations with DBP as embodied in the Extrajudicial Settlement Among Heirs, as well as the cash voucher which allegedly represents payment for taxes and transfer of title in petitioners' name do not serve as written notes or memoranda of the alleged verbal agreement.

The foregoing, notwithstanding, the Court finds it proper to reiterate the CA ruling that, in any case, since respondents had already acknowledged that Sergio had, in fact, incurred loan obligations with the DBP, they are liable to reimburse the amount paid by Leandro for the payment of the said obligation even if such payment was made without their knowledge or consent.

Article 1236 of the Civil Code clearly provides that:

The creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless