

## THIRD DIVISION

[ G.R. No. 174240, March 20, 2013 ]

**SPOUSES LEHNER AND LUDY MARTIRES, PETITIONERS, VS.  
MENELIA CHUA, RESPONDENT.**

### D E C I S I O N

**PERALTA, J.:**

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Amended Decision,<sup>[1]</sup> as well as the Resolutions<sup>[2]</sup> of the Court of Appeals (CA), dated September 30, 2005, July 5, 2006 and August 28, 2006, respectively, in CA-G.R. CV No. 76388. The assailed Decision of the CA reversed and set aside its earlier Decision, dated April 30, 2004, in favor of petitioners. The July 5, 2006 Resolution denied petitioners' Motion for Reconsideration, while the August 28, 2006 Resolution denied petitioners' Second Motion for Reconsideration.

The factual and procedural antecedents of the case are as follows:

Subject of the instant controversy are twenty-four memorial lots located at the Holy Cross Memorial Park in Barangay Bagbag, Novaliches, Quezon City. The property, more particularly described as "Lot: 24 lots, Block 213, Section: Plaza of Heritage-Reg.," is covered by Transfer Certificate of Title (TCT) No. 342914. Respondent, together with her mother, Florencia R. Calagos, own the disputed property. Their co-ownership is evidenced by a Deed of Sale and Certificate of Perpetual Care, denominated as Contract No. 31760, which was executed on June 4, 1992.<sup>[3]</sup>

On December 18, 1995, respondent borrowed from petitioner spouses the amount of P150,000.00. The loan was secured by a real estate mortgage over the abovementioned property. Respondent committed to pay a monthly interest of 8% and an additional 10% monthly interest in case of default.<sup>[4]</sup> Respondent failed to fully settle her obligation.

Subsequently, without foreclosure of the mortgage, ownership of the subject lots were transferred in the name of petitioners via a Deed of Transfer.<sup>[5]</sup>

On June 23, 1997, respondent filed with the Regional Trial Court (RTC) of Quezon City a Complaint against petitioners, Manila Memorial Park Inc., the company which owns the Holy Cross Memorial Park, and the Register of Deeds of Quezon City, praying for the annulment of the contract of mortgage between her and petitioners on the ground that the interest rates imposed are unjust and exorbitant. Respondent also sought accounting to determine her liability under the law. She likewise prayed that the Register of Deeds of Quezon City and Manila Memorial Park, Inc. be directed to reconvey the disputed property to her.<sup>[6]</sup>

On November 20, 1998, respondent moved for the amendment of her complaint to include the allegation that she later discovered that ownership of the subject lots was transferred in the name of petitioners by virtue of a forged Deed of Transfer and Affidavit of Warranty. Respondent prayed that the Deed of Transfer and Affidavit of Warranty be annulled.<sup>[7]</sup> In their Manifestation dated January 25, 1999, petitioners did not oppose respondent's motion.<sup>[8]</sup> Trial ensued.

After trial, the RTC of Quezon City rendered a Decision in favor of petitioners, the dispositive portion of which reads, thus:

Wherefore, premises considered, judgment is hereby rendered against Menelia R. Chua and in favor of the Sps. Lehner Martires and Ludy Martires; and Manila Memorial Park Cemetery, Inc. as follows:

1. The Complaint is denied and dismissed for lack of merit;
2. The counterclaims are granted as follows:
  - a. Menelia R. Chua is ordered to pay the Sps. Martires the amount of P100,000.00 as moral damages; the amount of P50,000.00 as exemplary damages; and the amount of P30,000.00 as reasonable attorney's fees plus costs of suit.
  - b. Menelia R. Chua is ordered to pay Manila Memorial Park Cemetery, Inc. the amount of P30,000.00 as reasonable attorney's fees plus costs of suit.

SO ORDERED.<sup>[9]</sup>

On appeal, the CA affirmed, with modification, the judgment of the RTC, disposing as follows:

WHEREFORE, premises considered, the instant appeal is hereby **DENIED** for lack of merit, and the decision of the trial court dated 03 August 2002 is hereby **AFFIRMED** with **MODIFICATION** as to the amount of moral and exemplary damages, and attorney's fees. Plaintiff-appellant Menelia R. Chua is hereby ordered to pay the defendant-appellees Spouses Martires the amount of P30,000.00 as moral damages; P20,000.00 as exemplary damages; and attorney's fees of P10,000.00 plus costs of suit.

Insofar as defendant-appellee Manila Memorial Park Cemetery, Inc. is concerned, the attorney's fees awarded is reduced to P10,000.00 plus costs of suit.

SO ORDERED.<sup>[10]</sup>

The CA ruled that respondent voluntarily entered into a contract of loan and that the execution of the Deed of Transfer is sufficient evidence of petitioners' acquisition of

ownership of the subject property.

Respondent filed a Motion for Reconsideration.<sup>[11]</sup> Petitioners opposed it.<sup>[12]</sup>

On September 30, 2005, the CA promulgated its assailed Amended Decision with the following dispositive portion:

WHEREFORE, the Court grants the movant's Motion for Reconsideration.

Accordingly, the decision of this Court dated April 30, 2004 in CA-G.R. CV No. 76388, which had affirmed the judgment of the Regional Trial Court of Quezon City, Branch 221, in Civil Case No. Q-97-31408, is **REVERSED** and **SET ASIDE**, and it is hereby declared that:

(1) The assailed decision dated August 3, 2002 of the Regional Trial Court of Quezon City Branch 221 in Civil Case No. Q-97-31408 is hereby **Reversed** with the following **MODIFICATIONS**, to wit:

(1) The Deed of Transfer dated July 3, 1996, as well as the Affidavit of Warranty, are hereby declared void ab initio;

(2) The loan of P150,000.00 is hereby subject to an interest of 12% per annum.

(3) The Manila Memorial Park Cemetery, Inc. and the Register of Deeds of Quezon City [are] hereby directed to cancel the registration or annotation of ownership of the spouses Martires on Lot: 24 lots, Block 213, Section: Plaza Heritage – Regular, Holy Cross Memorial Park, being a portion of Transfer Certificate of Title No. 342914 issued by the Register of Deeds of Quezon City, and revert registration of ownership over the same in the name of appellant Menelia R. Chua, and Florencia R. Calagos.

(4) The movant, Menelia R. Chua, is hereby ordered to pay the spouses Martires the amount of P150,000.00 plus interest of 12% per annum computed from December 18, 1995 up to the time of full payment thereof and, after deducting payments made in the total amount of P80,000.00, the same shall be paid within ninety (90) days from the finality of this decision. In case of failure to pay the aforesaid amount and the accrued interests from the period hereinstated, the property shall be sold at public auction to satisfy the mortgage debt and costs, and if there is an excess, the same is to be given to the owner.

No costs.

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

The CA reconsidered its findings and concluded that the Deed of Transfer which, on its face, transfers ownership of the subject property to petitioners, is, in fact, an equitable mortgage. The CA held that the true intention of respondent was merely to provide security for her loan and not to transfer ownership of the property to petitioners. The CA so ruled on the basis of its findings that: (1) the consideration, amounting to P150,000.00, for the alleged Deed of Transfer is unusually inadequate, considering that the subject property consists of 24 memorial lots; (2) the Deed of Transfer was executed by reason of the same loan extended by petitioners to respondent; (3) the Deed of Transfer is incomplete and defective; and (4) the lots subject of the Deed of Transfer are one and the same property used to secure respondent's P150,000.00 loan from petitioners.

Petitioners filed a Motion for Reconsideration,<sup>[14]</sup> but the CA denied it in its Resolution dated July 5, 2006.

On July 26, 2006, petitioners filed a Second Motion for Reconsideration,<sup>[15]</sup> but again, the CA denied it via its Resolution dated August 28, 2006.

Hence, the present petition based on the following grounds:

A. THE COURT OF APPEALS PATENTLY ERRED IN NOT UPHOLDING THE DEED OF TRANSFER EXECUTED BY THE RESPONDENT IN FAVOR OF THE PETITIONERS BY RULING THAT:

1. The Deed of Transfer executed by respondent in favor of petitioners over the subject property was not entered in the Notarial Book of Atty. Francisco Talampas and reported in the Notarial Section of the Regional Trial Court of Makati City.
2. The Deed of Transfer was not duly notarized by Atty. Francisco Talampas inasmuch as there was no convincing proof that respondent appeared before Notary Public Atty. Talampas.

B. THE COURT OF APPEALS PATENTLY ERRED IN RULING THAT THE DEED OF TRANSFER EXECUTED BETWEEN THE RESPONDENT AND THE PETITIONERS CONSTITUTED AN EQUITABLE MORTGAGE CONSIDERING THAT:

1. Said issue was not raised in any pleading in the appellate and trial courts.
2. Respondent herself admitted that a separate mortgage was executed to secure the loan.<sup>[16]</sup>

The petition lacks merit.

At the outset, the instant petition should be denied for being filed out of time. Petitioners admit in the instant petition that: (1) on July 18, 2006, they received a copy of the July 5, 2006 Resolution of the CA which denied their Motion for Reconsideration of the assailed Amended Decision; (2) on July 26, 2006, they filed a Motion to Admit Second Motion for Reconsideration attaching thereto the said Second Motion for Reconsideration; (3) on September 5, 2006, they received a copy of the August 28, 2006 Resolution of the CA which denied their Motion to Admit as well as their Second Motion for Reconsideration; and (4) they filed the instant petition on October 20, 2006.

Section 2, Rule 45 of the Rules of Court provides that a petition for review on *certiorari* under the said Rule "shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from **or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment.**" Relative thereto, Section 2, Rule 52 of the same Rules provides that "[n]o second motion for reconsideration of a judgment or final resolution by the same party shall be entertained." Based on the abovementioned dates, the start of the 15-day period for the filing of this petition should have been reckoned from July 18, 2006, the time of petitioners' receipt of the CA Resolution denying their Motion for Reconsideration, and not on September 5, 2006, the date when they received the CA Resolution denying their Second Motion for Reconsideration. Thus, petitioners should have filed the instant petition not later than August 2, 2006. It is wrong for petitioners to reckon the 15-day period for the filing of the instant petition from the date when they received the copy of the CA Resolution denying their Second Motion for Reconsideration. Since a second motion for reconsideration is not allowed, then unavoidably, its filing did not toll the running of the period to file an appeal by *certiorari*.<sup>[17]</sup> Petitioners made a critical mistake in waiting for the CA to resolve their second motion for reconsideration before pursuing an appeal.

Perfection of an appeal within the reglementary period is not only mandatory but also jurisdictional.<sup>[18]</sup> For this reason, petitioners' failure to file this petition within the 15-day period rendered the assailed Amended CA Decision and Resolutions final and executory, thus, depriving this Court of jurisdiction to entertain an appeal therefrom.<sup>[19]</sup> On this ground alone, the instant petition should be dismissed.

In any case, even granting, *arguendo*, that the present petition is timely filed, the Court finds no cogent reason to depart from the findings and conclusions of the CA in its disputed Amended Decision.

Anent the first assigned error, petitioners are correct in pointing out that notarized documents carry evidentiary weight conferred upon them with respect to their due execution and enjoy the presumption of regularity which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to falsity.<sup>[20]</sup> However, the presumptions that attach to notarized documents can be affirmed only so long as it is beyond dispute that the notarization was regular.<sup>[21]</sup> A defective notarization will strip the document of its public character and reduce it to a private instrument.<sup>[22]</sup> Consequently, when there is a defect in the notarization of a