

FIRST DIVISION

[G.R. No. 191594, October 16, 2013]

DAVID A. RAYMUNDO, PETITIONER, VS. GALEN REALTY AND MINING CORPORATION, RESPONDENT.

D E C I S I O N

REYES, J.:

Assailed in the present Petition for Review on *Certiorari* under Rule 45^[1] of the Rules of Court is the Decision^[2] dated October 30, 2009 and Resolution^[3] dated March 10, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 105401, which dismissed petitioner David A. Raymundo's (Raymundo) special civil action for *certiorari* for lack of merit.

Facts of the Case

Civil Case No. 18808 is an action for Reconveyance with Damages filed by respondent Galen Realty and Mining Corporation (Galen) against Raymundo and Tensorex Corporation (Tensorex). Subject of the case was a transaction between Galen and Raymundo over a house and lot located in Urdaneta Village, Makati City originally covered by Transfer Certificate of Title (TCT) No. S-105-651 in the name of Galen. By virtue of a Deed of Sale dated September 9, 1987 executed between Galen and Raymundo, title to the property was transferred to the latter, who later on sold the property to Tensorex, which caused the issuance of TCT No. 149755 in its name.

In a Decision dated April 12, 2000, the Regional Trial Court (RTC) of Makati City, Branch 62, in Civil Case No. 18808, ruled that the transaction between Raymundo and Galen was actually an equitable mortgage.^[4] On appeal, the CA upheld the RTC decision but modified the loan obligation of Galen and reduced the same to P3,865,000.00. The dispositive portion of the CA Decision^[5] dated May 7, 2004 provides:

WHEREFORE, PREMISES CONSIDERED, the Assailed Decision is hereby MODIFIED as follows:

V) the Deed of Absolute Sale between plaintiff-appellant and defendant-appellant David Raymundo is declared null and void, being a Deed of Equitable Mortgage;

VI) the Deed of Sale between defendant-appellant David Raymundo and defendant-appellant Tensorex [is] declared null and void;

VII) **defendant-appellant David Raymundo to reconvey the subject property to plaintiff-appellant's [sic] upon plaintiff-appellant[s] payment to defendant-appellant David Raymundo of [P]3,865,000.00 plus legal interest thereon from the date of filing of the complaint, until it is fully paid, or if reconveyance is no longer feasible, for defendants-appellants Raymundo and Tensorex to solidarily pay plaintiff-appellant the fair market value of the subject property by expert appraisal;**

VIII) defendants-appellants Raymundo and Tensorex to solidarily pay plaintiff-appellant, as follows:

- a) [P]100,000.00 in exemplary damages;
- b) [P]100,000.00 in attorney's fees;
- c) Cost[s] of suit.

Defendants-appellant's COUNTERCLAIM is hereby **DISMISSED.**

SO ORDERED.^[6] (Emphasis ours)

Said CA decision eventually became final and executory on January 11, 2005, and entry of judgment was made.^[7]

Galen moved for the execution of the CA decision, submitting that the writ of execution should order Raymundo and Tensorex to solidarily pay the following: (1) the current fair market value of the property less Galen's mortgage debt of P3,865,000.00 with legal interest; and (2) the award of damages and costs of suit. Raymundo and Tensorex opposed the motion, arguing that the CA decision provides for two alternatives – one, for Raymundo to reconvey the property to Galen after payment of P3,865,000.00 with legal interest or, two, if reconveyance is no longer feasible, for Raymundo and Tensorex to solidarily pay Galen the fair market value of the property.^[8]

In its Order^[9] dated February 3, 2006, the RTC granted Galen's motion and ordered the issuance of a writ of execution. The property (land and improvements) was appraised by Asian Appraisal, Inc. at P49,470,000.00.^[10] Subsequently, the appointed special sheriff issued a Notice of Reconveyance/Notice of Demand to Pay^[11] on March 8, 2007. The sheriff also issued on April 4, 2007 a Notice of Levy on Execution^[12] to the Register of Deeds of Makati City over the rights and interest of Tensorex over the property, including all buildings and improvements covered by TCT No. 149755.

On July 16, 2007, the special sheriff issued a Notice of Sheriff's Sale of Real Estate Property,^[13] stating that "the total outstanding balance of mortgage indebtedness as of January 25, 1988 and interest for 225 months with 2.25% interest is [P]37,108,750.00 plus costs x x x,"^[14] and sale at public auction was set on August 8, 2007. Raymundo filed a Manifestation and Urgent Motion^[15] objecting to the auction sale and expressing his willingness to reconvey the property upon payment

in full by Galen of its indebtedness. Galen filed a Counter Manifestation and Opposition^[16] claiming that reconveyance is no longer feasible as the property is heavily encumbered and title to the property is still in the name of Tensorex which had already gone out of operations and whose responsible officers are no longer accessible.

Raymundo also submitted on August 6, 2007 a duplicate copy of the Cancellation of the Real Estate Mortgages^[17] over the property. As regards the other entries on the title, Raymundo stated that these do not affect his rights, interests and participation over the property as the Notice of *Lis Pendens* of Civil Case No. 18808 inscribed on September 27, 1990 was superior to these entries.^[18] On the same date, the RTC issued an Order^[19] noting Raymundo's motions, ordering him to show proof how his willingness to reconvey the property can be realized, and holding the auction sale in abeyance. The order also provided that "[c]ompliance herein is enjoined x x x, which proof shall consist primarily of a submission of the Transfer Certificate of Title covering the subject property duly registered in Raymundo's name."^[20]

Raymundo filed a Compliance/Comment^[21] to the RTC's order, contending that his obligation to reconvey is not yet due pending payment of Galen's own obligation.

On December 12, 2007, the RTC issued an Order^[22] lifting the suspension of the auction sale and directing Galen to coordinate with the deputy sheriff for the enforcement of the decision. The RTC ruled that Raymundo failed to show proof that the title was already registered in his name and thus, it resolves to deny his compliance/comment.

Raymundo filed a Motion for Reconsideration^[23] of the RTC's order but it was denied per Order^[24] dated August 15, 2008. As a result, the property was sold at a public auction on November 26, 2008 for P37,108,750.00, with Galen as the highest bidder, and a certificate of sale^[25] was issued by the sheriff.

Raymundo then filed a special civil action for *certiorari* with the CA. In the assailed Decision^[26] dated October 30, 2009, the petition was dismissed for lack of merit. His motion for reconsideration having been denied in the assailed CA Resolution^[27] dated March 10, 2010, Raymundo is now seeking recourse with the Court on petition for review under Rule 45 of the Rules of Court.

Raymundo contends that the CA committed an error in upholding the validity of RTC's writ of execution. He argues that the writ changed the tenor of the final and executory CA decision as his obligation under said decision is to reconvey the property upon Galen's payment of its obligation. Raymundo also argues that the sale on public auction of the property was void inasmuch as the RTC's conclusion, as affirmed by the CA, that reconveyance is no longer feasible has no basis.^[28]

Galen, on the other hand, claims that Raymundo was given the option to choose between reconveyance and payment of the fair market value of the property but did not manifest his choice. It was only when the property was set for sale at public auction that Raymundo manifested his choice of reconveyance, which was opposed by Galen because by that time, the property was still in the name of Tensorex and

was already heavily encumbered.^[29] Galen maintains that the writ of execution and the auction sale was valid inasmuch as payment of the fair market value of the property is the only feasible way to satisfy the judgment.

Ruling of the Court

The manner of execution of a final judgment is not a matter of "choice". It does not revolve upon the pleasure or discretion of a party as to how a judgment should be satisfied, unless the judgment expressly provides for such discretion. Foremost rule in execution of judgments is that "a writ of execution must conform strictly to every essential particular of the judgment promulgated, and may not vary the terms of the judgment it seeks to enforce, nor may it go beyond the terms of the judgment sought to be executed."^[30] As a corollary rule, the Court has clarified that "a judgment is not confined to what appears on the face of the decision, but extends as well to those necessarily included therein or necessary thereto."^[31]

In this case, the writ of execution issued by the RTC originated from Civil Case No. 18808, which is an action for Reconveyance with Damages filed by Galen against Raymundo and Tensorex, where Galen sought recovery of the property subject of the Deed of Absolute Sale between Galen and Raymundo. The RTC ruled in favor of Galen, finding that the transaction between them is an equitable mortgage, which was affirmed by the CA. Both the RTC and the CA, in the dispositive portions of their respective decisions, ordered Raymundo to "**reconvey the subject property to [Galen] upon [Galen's] payment to x x x Raymundo x x x plus legal interest thereon from the date of [the] filing of the complaint, until it is fully paid, or if reconveyance is no longer feasible, for x x x Raymundo and Tensorex to solidarily pay [Galen] the fair market value of the subject property**" by expert appraisal."^[32] In implementing said judgment, the RTC should have considered the nature of the agreement between Galen and Raymundo. The rule is that in case of ambiguity or uncertainty in the dispositive portion of a decision, the body of the decision may be scanned for guidance in construing the judgment.^[33]

Nevertheless, the import of the dispositive portion of the CA Decision dated May 7, 2004 is clear. The principal obligation of Raymundo under the judgment is to reconvey the property to Galen; on the other hand, Galen's principal obligation is to pay its mortgage obligation to Raymundo. Performance of Raymundo's obligation to reconvey is upon Galen's payment of its mortgage obligation in the amount of P3,865,000.00 plus legal interest thereon from the date of the filing of the complaint, until fully paid. This is in accord with the nature of the agreement as an equitable mortgage where the real intention of the parties is to charge the real property as security for a debt.^[34] It was wrong for the RTC to require Raymundo to show proof of his "willingness" to reconvey the property because as stressed earlier, their agreement was an equitable mortgage and as such, Galen retained ownership of the property.^[35] In *Montevirgen, et al. v. CA, et al.*,^[36] the Court was emphatic in stating that "the circumstance that the original transaction was subsequently declared to be an equitable mortgage must mean that the title to the subject land which had been transferred to private respondents actually remained or is transferred back to [the] petitioners herein as owners-mortgagors, conformably to the well-established doctrine that the mortgagee does not become the owner of the mortgaged property because the ownership remains with the mortgagor."^[37] Thus,

it does not devolve upon Raymundo to determine whether he is willing to reconvey the property or not because it was not his to begin with. If Raymundo refuses to reconvey the property, then the court may direct that the act be done by some other person appointed by it as authorized by Section 10 of Rule 39 of the Rules of Court, to wit:

Sec. 10. Execution of judgments for specific act. (a) conveyance, delivery of deeds, or other specific acts; vesting title.—If a judgment directs a party to execute a conveyance of land or personal property, or to deliver deeds or other documents, or to perform any other specific act in connection therewith, **and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done shall have like effect as if done by the party.** If real or personal property is situated within the Philippines, the court in lieu of directing a conveyance thereof may by an order divest the title of any party and vest it in others, which shall have the force and effect of a conveyance executed in due form of law. (Emphasis and underscoring ours)

The “some other person appointed by the court” can be the Branch Clerk of Court, [38] the Sheriff, [39] or even the Register of Deeds, [40] and their acts when done under such authority shall have the effect of having been done by Raymundo himself. A party cannot frustrate execution of a judgment for a specific act on the pretext of inability to do so as the Rules provide ample means by which it can be satisfied.

Conversely, Galen’s obligation to pay the mortgage obligation is not subject to Raymundo’s reconveyance of the property. If Galen refuses to pay, it is only then that the court may direct the foreclosure of the mortgage on the property and order its sale at public auction to satisfy Galen’s judgment debt against Raymundo, pursuant to Rule 68 of the Rules of Court on Foreclosure. [41] If Raymundo, meanwhile, unjustly refuses to accept Galen’s payment, the latter’s remedy is to consign the payment with the court in accordance with the Civil Code provisions on consignment.

It is only when reconveyance is no longer feasible that Raymundo and Tensorex should pay Galen the fair market value of the property. In other words, it is when the property has passed on to an innocent purchaser for value and in good faith, has been dissipated, or has been subjected to an analogous circumstance which renders the return of the property impossible that Raymundo and/or Tensorex, is obliged to pay Galen the fair market value of the property.

In this case, it appears that the RTC accommodated Galen’s choice of payment of the fair market value of the property and it became the main obligation of Raymundo as well as Tensorex instead of being the alternative. Worse, it even considered the subject property as absolutely owned by Tensorex and levied upon the same to satisfy payment of the fair market value of the very property that has only been pledged as security of Galen’s loan. While it indeed appears that Raymundo was able to transfer title of the property to Tensorex, it should be noted