

FIRST DIVISION

[G.R. No. 158891, June 27, 2012]

**PABLO P. GARCIA, PETITIONER, VS. YOLANDA VALDEZ VILLAR,
RESPONDENT.**

DECISION

LEONARDO-DE CASTRO, J.:

This is a petition for review on *certiorari*^[1] of the February 27, 2003 Decision^[2] and July 2, 2003 Resolution^[3] of the Court of Appeals in **CA-G.R. SP No. 72714**, which reversed the May 27, 2002 Decision^[4] of the Regional Trial Court (RTC), Branch 92 of Quezon City in Civil Case No. Q-99-39139.

Lourdes V. Galas (Galas) was the original owner of a piece of property (subject property) located at Malindang St., Quezon City, covered by Transfer Certificate of Title (TCT) No. RT-67970(253279).^[5]

On July 6, 1993, Galas, with her daughter, Ophelia G. Pingol (Pingol), as co-maker, mortgaged the subject property to Yolanda Valdez Villar (Villar) as security for a loan in the amount of Two Million Two Hundred Thousand Pesos (P2,200,000.00).^[6]

On October 10, 1994, Galas, again with Pingol as her co-maker, mortgaged the same subject property to Pablo P. Garcia (Garcia) to secure her loan of One Million Eight Hundred Thousand Pesos (P1,800,000.00).^[7]

Both mortgages were annotated at the back of TCT No. RT-67970 (253279), to wit:

REAL ESTATE MORTGAGE

Entry No. 6537/T-RT-67970(253279) MORTGAGE – In favor of Yolanda Valdez Villar m/to Jaime Villar to guarantee a principal obligation in the sum of P2,200,000- mortgagee's consent necessary in case of subsequent encumbrance or alienation of the property; Other conditions set forth in Doc. No. 97, Book No. VI, Page No. 20 of the Not. Pub. of Diana P. Magpantay

Date of Instrument: 7-6-93

Date of Inscription: 7-7-93

SECOND REAL ESTATE MORTGAGE

Entry No. 821/T-RT-67970(253279) MORTGAGE – In favor of Pablo Garcia m/to Isabela Garcia to guarantee a principal obligation in the sum

of P1,800,000.00 mortgagee's consent necessary in case of subsequent encumbrance or alienation of the property; Other conditions set forth in Doc. No. 08, Book No. VII, Page No. 03 of the Not. Pub. of Azucena Espejo Lozada

Date of Instrument: 10/10/94

Date of Inscription: 10/11/94

LRC Consulta No. 169^[8]

On November 21, 1996, Galas sold the subject property to Villar for One Million Five Hundred Thousand Pesos (P1,500,000.00), and declared in the Deed of Sale^[9] that such property was "free and clear of all liens and encumbrances of any kind whatsoever."^[10]

On December 3, 1996, the Deed of Sale was registered and, consequently, TCT No. RT-67970(253279) was cancelled and TCT No. N-168361^[11] was issued in the name of Villar. Both Villar's and Garcia's mortgages were carried over and annotated at the back of Villar's new TCT.^[12]

On October 27, 1999, Garcia filed a Petition for *Mandamus* with Damages^[13] against Villar before the RTC, Branch 92 of Quezon City. Garcia subsequently amended his petition to a Complaint for Foreclosure of Real Estate Mortgage with Damages.^[14] Garcia alleged that when Villar purchased the subject property, she acted in bad faith and with malice as she knowingly and willfully disregarded the provisions on laws on judicial and extrajudicial foreclosure of mortgaged property. Garcia further claimed that when Villar purchased the subject property, Galas was relieved of her contractual obligation and the characters of creditor and debtor were merged in the person of Villar. Therefore, Garcia argued, he, as the second mortgagee, was subrogated to Villar's original status as first mortgagee, which is the creditor with the right to foreclose. Garcia further asserted that he had demanded payment from Villar,^[15] whose refusal compelled him to incur expenses in filing an action in court.^[16]

Villar, in her Answer,^[17] claimed that the complaint stated no cause of action and that the second mortgage was done in bad faith as it was without her consent and knowledge. Villar alleged that she only discovered the second mortgage when she had the Deed of Sale registered. Villar blamed Garcia for the controversy as he accepted the second mortgage without prior consent from her. She averred that there could be no subrogation as the assignment of credit was done with neither her knowledge nor prior consent. Villar added that Garcia should seek recourse against Galas and Pingol, with whom he had privity insofar as the second mortgage of property is concerned.

On May 23, 2000, the RTC issued a Pre-Trial Order^[18] wherein the parties agreed on the following facts and issue:

STIPULATIONS OF FACTS/ADMISSIONS

The following are admitted:

1. the defendant admits the second mortgage annotated at the back of TCT No. RT-67970 of Lourdes V. Galas with the qualification that the existence of said mortgage was discovered only in 1996 after the sale;
2. the defendant admits the existence of the annotation of the second mortgage at the back of the title despite the transfer of the title in the name of the defendant;
3. the plaintiff admits that defendant Yolanda Valdez Villar is the first mortgagee;
4. the plaintiff admits that the first mortgage was annotated at the back of the title of the mortgagor Lourdes V. Galas; and
5. the plaintiff admits that by virtue of the deed of sale the title of the property was transferred from the previous owner in favor of defendant Yolanda Valdez Villar.

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ISSUE

Whether or not the plaintiff, at this point in time, could judicially foreclose the property in question.

On June 8, 2000, upon Garcia's manifestation, in open court, of his intention to file a Motion for Summary Judgment,^[19] the RTC issued an Order^[20] directing the parties to simultaneously file their respective memoranda within 20 days.

On June 26, 2000, Garcia filed a Motion for Summary Judgment with Affidavit of Merit^[21] on the grounds that there was no genuine issue as to any of the material facts of the case and that he was entitled to a judgment as a matter of law.

On June 28, 2000, Garcia filed his Memorandum^[22] in support of his Motion for Summary Judgment and in compliance with the RTC's June 8, 2000 Order. Garcia alleged that his equity of redemption had not yet been claimed since Villar did not foreclose the mortgaged property to satisfy her claim.

On August 13, 2000, Villar filed an Urgent Ex-Parte Motion for Extension of Time to File Her Memorandum.^[23] This, however, was denied^[24] by the RTC in view of Garcia's Opposition.^[25]

On May 27, 2002, the RTC rendered its Decision, the dispositive portion of which reads:

WHEREFORE, the foregoing premises considered, judgment is hereby rendered in favor of the plaintiff Pablo P. Garcia and against the defendant Yolanda V. Villar, who is ordered to pay to the former within a period of not less than ninety (90) days nor more than one hundred twenty (120) days from entry of judgment, the sum of P1,800,000.00 plus legal interest from October 27, 1999 and upon failure of the defendant to pay the said amount within the prescribed period, the property subject matter of the 2nd Real Estate Mortgage dated October 10, 1994 shall, upon motion of the plaintiff, be sold at public auction in the manner and under the provisions of Rules 39 and 68 of the 1997 Revised Rules of Civil Procedure and other regulations governing sale of real estate under execution in order to satisfy the judgment in this case. The defendant is further ordered to pay costs.^[26]

The RTC declared that the direct sale of the subject property to Villar, the first mortgagee, could not operate to deprive Garcia of his right as a second mortgagee. The RTC said that upon Galas's failure to pay her obligation, Villar should have foreclosed the subject property pursuant to Act No. 3135 as amended, to provide junior mortgagees like Garcia, the opportunity to satisfy their claims from the residue, if any, of the foreclosure sale proceeds. This, the RTC added, would have resulted in the extinguishment of the mortgages.^[27]

The RTC held that the second mortgage constituted in Garcia's favor had not been discharged, and that Villar, as the new registered owner of the subject property with a subsisting mortgage, was liable for it.^[28]

Villar appealed^[29] this Decision to the Court of Appeals based on the arguments that Garcia had no valid cause of action against her; that he was in bad faith when he entered into a contract of mortgage with Galas, in light of the restriction imposed by the first mortgage; and that Garcia, as the one who gave the occasion for the commission of fraud, should suffer. Villar further asseverated that the second mortgage is a void and inexistent contract considering that its cause or object is contrary to law, moral, good customs, and public order or public policy, insofar as she was concerned.^[30]

Garcia, in his Memorandum,^[31] reiterated his position that his equity of redemption remained "unforeclosed" since Villar did not institute foreclosure proceedings. Garcia added that "the mortgage, until discharged, follows the property to whomever it may be transferred no matter how many times over it changes hands as long as the annotation is carried over."^[32]

The Court of Appeals reversed the RTC in a Decision dated February 27, 2003, to wit:

WHEREFORE, the decision appealed from is **REVERSED** and another one entered **DISMISSING** the complaint for judicial foreclosure of real estate mortgage with damages.^[33]

The Court of Appeals declared that Galas was free to mortgage the subject property even without Villar's consent as the restriction that the mortgagee's consent was necessary in case of a subsequent encumbrance was absent in the Deed of Real Estate Mortgage. In the same vein, the Court of Appeals said that the sale of the subject property to Villar was valid as it found nothing in the records that would show that Galas violated the Deed of Real Estate Mortgage prior to the sale.^[34]

In dismissing the complaint for judicial foreclosure of real estate mortgage with damages, the Court of Appeals held that Garcia had no cause of action against Villar "in the absence of evidence showing that the second mortgage executed in his favor by Lourdes V. Galas [had] been violated and that he [had] made a demand on the latter for the payment of the obligation secured by said mortgage prior to the institution of his complaint against Villar."^[35]

On March 20, 2003, Garcia filed a Motion for Reconsideration^[36] on the ground that the Court of Appeals failed to resolve the main issue of the case, which was whether or not Garcia, as the second mortgagee, could still foreclose the mortgage after the subject property had been sold by Galas, the mortgage debtor, to Villar, the mortgage creditor.

This motion was denied for lack of merit by the Court of Appeals in its July 2, 2003 Resolution.

Garcia is now before this Court, with the same arguments he posited before the lower courts. In his Memorandum,^[37] he added that the Deed of Real Estate Mortgage contained a stipulation, which is violative of the prohibition on *pactum commissorium*.

Issues

The crux of the controversy before us boils down to the propriety of Garcia's demand upon Villar to either pay Galas's debt of P1,800,000.00, or to judicially foreclose the subject property to satisfy the aforesaid debt. This Court will, however, address the following issues *in seriatim*:

1. Whether or not the second mortgage to Garcia was valid;
2. Whether or not the sale of the subject property to Villar was valid;
3. Whether or not the sale of the subject property to Villar was in violation of the prohibition on *pactum commissorium*;
4. Whether or not Garcia's action for foreclosure of mortgage on the subject property can prosper.

Discussion

Validity of second mortgage to Garcia and sale of subject property to Villar

At the onset, this Court would like to address the validity of the second mortgage to