

THIRD DIVISION

[G.R. No. 174096, July 20, 2010]

**SPOUSES DIVINIA C. PUBLICO AND JOSE T. PUBLICO,*
PETITIONERS, VS. TERESA BAUTISTA, RESPONDENT.**

DECISION

CARPIO MORALES, J.:

Petitioners, spouses Divinia Publico (Divinia) and Jose Publico (Jose) obtained on April 12, 1996 a P200,000 loan from Teresa Bautista (respondent) which was secured by a real estate mortgage (REM) over a real property covered by Transfer Certificate of Title (TCT) No. T-244828.

The REM, "*Kasulatan ng Pagkakautang na may Panagot*^[1]" (*Kasulatan*), provides, *inter alia*, that the loan would bear interest and penalties to would be paid within one-and-a-half years, failing which the mortgaged property would be sold pursuant to Act 3135.^[2] Petitioners surrendered the owners' copy of TCT No. T-244828 to respondent.

In September 1996, petitioners borrowed from respondent the owners' copy of the title in order to re-mortgage the property covered thereby to secure another loan the proceeds of which would be used to pay respondent. Divina executed a *Pagpapatunay*^[3] reading:

x x x x

Na, ang aking pagkakautang ay aking babayaran kung ang titulong ito ay mainsanla ko sa banko at kami ay nagkasundo din na sa P200,00.00 thousand [*sic*] na aking pagkakautang ay magbibigay muna ako ng P100,000.00 [*sic*]. At mag-iiwan ako ng rehistro ng aking sasakyan sa Taxi na may numero na MVMR 40693326 MVMT 36169691 para naman sa natitirang balanse na P100,000.00 thousand [*sic*] bilang prenda.

x x x x^[4]

Petitioners thereupon obtained a P200,000 loan from Hiyas Savings and Loan Bank, Inc. (Hiyas Bank).^[5] They, however, failed to settle their obligation to respondent. Respondent, fearing that Hiyas Bank might foreclose the mortgage, offered Hiyas Bank to pay petitioners' loan. The bank agreed to the proposal, with the condition that respondent also pay the other obligations of petitioners that were secured by REMs on two other properties covered by TCT Nos. T-265662 (M) and T-265663.

In the presence of petitioner Jose, respondent settled petitioners' obligations to the

bank amounting to P697,714.58. The receipts of payment were in the name of Jose, however, albeit it contained annotations on the dorsal portions thereof that respondent advanced the payment of petitioners' obligations. Both Jose and respondent affixed their signatures on the annotations.^[6]

Despite demands, petitioners failed to pay their obligations totaling P897,714.58, hence, respondent filed on February 1, 1999 a Complaint^[7] for foreclosure of mortgage, sum of money and damages before the Regional Trial Court (RTC) of Bulacan.

In their Answer with Counterclaim,^[8] petitioners alleged that they had paid their obligations.

By Decision^[9] of May 16, 2002, Branch 19 of the Bulacan RTC, noting that petitioners did not present evidence in support of their bare assertions,^[10] rendered judgment against petitioners, disposing as follows:

WHEREFORE, judgment is hereby rendered in favor of [respondent] and against [petitioners] as follows:

1. [On] the first cause of action

a) Ordering [petitioners] to pay [respondent] the principal sum of P200,000.00 plus interest at the rate of 6% per year and penalty at the rate of 6% per year both to commence on October 26, 1998.

b) In default thereof, the mortgaged property under TCT No. T-244828 shall be ordered foreclosed by the Court.

2. On the second cause of action

a) Ordering [petitioners] to pay [respondent] the total amount of P697, [714.58] plus interest at the rate of 6% per year to commence on October 26, 1998.

3. On the third cause of action

a) Ordering [petitioners] to pay [respondent] the sum of P20,000.00 as and by way of attorney's fees.

b) Ordering [petitioners] to pay costs of suit.

4. [Respondent] is directed to return TCT Nos. T-265662(M) and T-265663 to [petitioners]-spouses.

All other damages prayed for by the [respondent] and the counterclaim of [petitioners] are dismissed for lack of merit.

SO ORDERED.

On respondent's Motion,^[11] the trial court *amended* its decision to indicate the rate of interest at 12% per annum on petitioners' unpaid loans.^[12]

The Court of Appeals to which petitioners appealed, affirmed the trial court's decision, by Decision^[13] of November 29, 2005 in this wise:

x x x x

A perusal of the "Pagpapatunay" executed by the appellant Divinia reveals, all too plainly, that novation has not taken place, and that the loan obligation of appellants contained in the "Kasulatan ng Pagkakautang na may Panagot" subsists despite the latter agreement. Appellants' contention that the change effected in the latter covenant - the former secured obligation having been converted to an unsecured obligation - operates as a change in the principal conditions of the obligation is unavailing. It must be stressed that the real estate mortgage constituted by appellants is a security for their loan obligation with appellee, but is not, and will never be, the principal obligation itself.

x x x x

x x x What had been created by the new agreement is, at best, a conditional obligation, which could not have extinguished the previous pure obligation.

x x x x

By its terms, the "Pagpapatunay" is a conditional promise of payment, which, although made in consideration of the principal indebtedness, could not be deemed to have substituted the main obligation unless and until the condition is fulfilled. Only the payment as promised therein could have given rise to the new obligation referred to under the same.

After evaluating the testimonies of the parties and their witnesses, the trial court found that such payment had not been made x x x.

x x x x

As to whether or not appellants are liable to appellee for the amount advanced by the latter for settlement of the former's mortgage indebtedness with Hiyas Bank, We answer in the affirmative.

Based on the official receipts issued by the Hiyas Bank, payment was accepted not from appellee but from appellant Jose, who is himself a principal debtor with respect to appellants' mortgage indebtedness to the said bank. The acknowledgement made by appellant Jose annotated on the dorsal portion of the official receipts issued by Hiyas Bank is an express recognition that the money paid by him to the bank was advanced to him by the appellee. Thus, there is no doubt that, as

between appellants and appellee, another contract of loan was created through the transaction, and that, appellants are obligated to the repayment of such loan, upon demand.

Appellants contend that appellee could not compel them to reimburse the amount paid to Hiyas Bank, since such payment is one made by a third person without the knowledge of the debtor and triggers into operation Article 1236 of the Civil Code, the second paragraph of which reads:

Whoever pays for the debt of another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor.

Even granting that the payment was one made by a third person, although the evidence tend[s] to prove that it was not, we find at least three circumstances which militate against appellants' contention: *first*, such payment was expressly allowed by appellant Jose, who was himself a principal debtor; *second*, such payment is beneficial to the appellants since it served to release their properties from encumbrance; and *third*, when appellant Divinia learned about the payment made by her husband and appellee, she did nothing to express her objection thereto, or her repudiation thereof, within a reasonable time. The debtor who knows that another has paid his obligation for him and who does not object thereto or repudiate it at any time, must pay the amount advanced by the third person.

x x x x^[14] (emphasis and underscoring supplied)

Petitioners' motion for reconsideration was denied.^[15] On petitioners' contention that they were deprived of the equity of redemption because the trial court did not fix a period within which to pay the judgment debt,^[16] the appellate court clarified that:

x x x paragraph 1 (a) of the dispositive portion of the *Decision* appealed from, as modified by the *Order* dated October 18, 2002, ordering appellants to pay the plaintiff the principal sum of P200,000.00 plus interest at the rate of 12% per year and penalty at the rate of 6% per year to commence on October 16, 1998, **should include the phrase "within ninety (90) days from finality of judgment" declared in the body thereof.**^[17] (emphasis and underscoring supplied)

Hence, the present petition^[18] raising the following issues:

A. WHETHER...[RESPONDENT] COULD STILL FILE AN ACTION FOR JUDICIAL FORECLOSURE ON THE BASIS OF THE "KASULATAN NG PAGPAPAUTANG NA MAY PANAGOT" DESPITE THE...SUBSEQUENT EXECUTION OF THE "PAGPAPATUNAY" AND THE DELIVERY OF THE