

## SECOND DIVISION

**[ G.R. No. 167835, November 15, 2010 ]**

**SPOUSES ALFREDO AND ENCARNACION CHING, PETITIONERS,  
VS. FAMILY SAVINGS BANK, AND SHERIFF OF MANILA,  
RESPONDENTS.**

**[G.R. NO. 188480]**

**ALFREDO CHING, PETITIONER, VS. FAMILY SAVINGS BANK AND  
THE SHERIFF OF MANILA, RESPONDENT.**

### D E C I S I O N

**PERALTA, J.:**

Before this Court are two consolidated<sup>[1]</sup> cases. In G.R. No. 167835, the spouses Alfredo and Encarnacion Ching (the Spouses Ching), *via* a petition for review on *certiorari*, are seeking to annul and set aside the Resolutions of the Court of Appeals (CA), dated November 17, 2004 and April 7, 2005 in CA-G.R. SP No. 87217. While in G.R. No. 188480, Alfredo Ching (Alfredo), also *via* a petition for review on *certiorari*, is assailing the Decision<sup>[2]</sup> dated July 31, 2008 rendered by the CA in CA-G.R. SP No. 96675, dismissing the petition, and the Resolution dated June 19, 2009 denying petitioner's motion for reconsideration.

The procedural and factual antecedents are as follows:

Cheng Ban Yek and Co., Inc. secured a loan from Family Savings Bank (Bank), now BPI Family Bank, with Alfredo acting as surety. On August 6, 1981, the Bank filed a Complaint with the then Court of First Instance (CFI) of Manila, for collection of a sum of money against Cheng Ban Yek and Co., Inc. and Alfredo, docketed as Civil Case No. 142309. On August 12, 1982, the CFI rendered summary judgment in favor of the Bank. Alfredo and Cheng Ban Yek and Co., Inc. appealed the summary judgment before the CA.<sup>[3]</sup> The CA later issued a Decision affirming the summary judgment. Also, the subsequent petition filed before this Court questioning the CA decision was dismissed for having been filed out of time.<sup>[4]</sup>

Meanwhile, upon motion of the Bank, the CFI issued an Order granting execution pending appeal. Consequently, the conjugal property of the Spouses Ching, covered by Transfer Certificate of Title (TCT) No. S-3151, was attached, levied, and thereafter sold at public auction on October 10, 1983, wherein the Bank emerged as the highest bidder.

#### **G.R. No. 167835**

On March 30, 2004, after more than two decades since the levy and auction sale, the Bank filed a Motion to Retrieve Records, For Issuance of Final Deed of

Conveyance, To Order Register of Deeds of Makati City to Transfer Title and For Writ of Possession<sup>[5]</sup> before the Regional Trial Court (RTC) of Manila, Branch 40. Alfredo opposed<sup>[6]</sup> the motion and his wife, Encarnacion Ching (Encarnacion), filed a Motion for Leave to Intervene and to Admit Complaint-in-Intervention.<sup>[7]</sup>

On August 12, 2004, the RTC issued an Order<sup>[8]</sup> granting the Bank's motion and denying Encarnacion's motion, the dispositive portion of which reads:

WHEREFORE, Order is issued directing the retrieval from the archives of the Court records of this case granting aforesaid motion of plaintiff and ORDERING:

1. the issuance of a Final Deed of Conveyance by Deputy Sheriff Ferdinand J. Guerrero or the Clerk of Court/*Ex-Officio* Sheriff or any of her duly authorized deputy sheriffs, all of this Court, to plaintiff herein (renamed Family Bank and Trust Co., Inc.) as the highest bidder at the public auction sale;
2. the Register of Deeds of Makati City to issue a new title in the name of Family Bank and Trust Co., Inc. (formerly Family Savings Bank), after payment of the required taxes and fees; and
3. the issuance of a Writ of Possession directing the Clerk of Court/*Ex-Officio* Sheriff of this court or any of her deputies to place herein plaintiff, thru its duly authorized officers and employees, in possession of the subject property presently covered by TCT No. S-3151.

SO ORDERED.

In granting the motion, the RTC ratiocinated, to wit:

x x x x

1. The validity of the execution issued on September 22, 1982 by this Court thru Hon. Augusto E. Villarin is already "res judicata" when it was raised on appeal by co-defendant Alfredo Ching with the Honorable Court of Appeals in CA-G.R. CV No. 02421, which dismissed the appeal and the dismissal was affirmed by the Honorable Supreme Court when co-defendant Alfredo Ching's Petition for Review was dismissed for being filed out of time per its Decision dated February 24, 2003, in G.R. No. 118830 (Annex F of plaintiff's aforesaid motion to retrieve records etc., dated March 26, 2004, pages 46-55 of record) which Decision has become final and executory on November 4, 2003 (Annex G-1, supra, Entry of Judgment; page 56 of record).

2. The judgment of this Court had not prescribed since it was timely executed on October 10, 1983 and the herein plaintiff's motion to retrieve records, etc. dated March 26, 2004, seeks only to transfer the registration of title in its name and to take possession of the property as

the new owner thereof by virtue of the execution sale and the return of the writ of execution to this Court by the executing Deputy Sheriff, Ferdinand J. Guerrero.

3. The issue as to whether the conjugal property of the spouses Alfredo Ching and Encarnacion Ching could validly be levied upon and executed to answer for the personal debt of Mr. Alfredo Ching arising from his execution of an accommodation surety, has been resolved by the Honorable Supreme Court in its aforesaid Decision, dated February 24, 2003 (Annex F, supra) when it held that:

x x x x

4. Plaintiff does not seek to execute the final decision of the Honorable Supreme Court in G.R. No. 118830. The statement in paragraph 2 above is reiterated.

5. The cited cases of *Ayala Investment and Development Corporation v. CA*, 286 SCRA 272 (1998) and *Alfredo Ching and Encarnacion Ching v. CA*, G.R. No. 124642, February 24, 2004, are not *res judicata* in the instant case, since the parties involved are not the same and the facts are completely different. The former case was also cited by them in their motion for reconsideration, dated March 28, 2003 (pages 155-166 of record) and amended motion for reconsideration, dated March 31, 2003 (pages 169-187 of record) with the Honorable Supreme Court in G.R. 118830, but the same was denied with finality in its Resolution, dated October 13, 2003 (page 188 of record).

6. Defendant Alfredo Ching and movant Encarnacion Ching are to blame since they did not redeem the property within the one (1) year redemption period which expired on October 20, 1984 and which resulted in the forfeiture of the property in favor of the plaintiff as the purchaser at the public auction sale.

7. Plaintiff is not liable for damages and, in the first place, this Court has no jurisdiction to award said damages claimed by spouses Ching.

8. The execution of the final Decision of this Court had been completed in 1983. Movant Encarnacion Ching cannot anymore intervene under Section 2, Rule 19 of the 1997 Rules of Civil Procedure, as amended.<sup>[9]</sup>

The Spouses Ching filed a Motion for Reconsideration,<sup>[10]</sup> but it was denied in the Order<sup>[11]</sup> dated September 28, 2004.

Aggrieved, the Spouses Ching filed a petition for *certiorari* before the CA, docketed as CA-G.R. SP No. 87217, arguing that the August 12, 2004 Order of the RTC was an act in grave abuse of discretion.

On November 17, 2004, the CA issued a Resolution<sup>[12]</sup> dismissing the petition for failure to attach copies of pertinent pleadings and relevant documents to the

petition, the decretal portion of which reads:

For failure to attach copies of all pleadings and documents relevant and pertinent to the instant petition, the same is hereby **DISMISSED**.

SO ORDERED.

The Spouses Ching then filed a motion for reconsideration, but it was denied in the Resolution<sup>[13]</sup> dated April 7, 2005.

Hence, the petition docketed as **G.R. No. 167835**.

### **G.R. No. 188480**

In the meantime, during the course of the proceedings in the RTC, the Bank filed an Urgent *Ex Parte* Motion to Cancel TCT No. S-3151,<sup>[14]</sup> praying for the RTC to order the Register of Deeds of Makati City, to cancel TCT No. S-3151 in the names of the Spouses Ching, and issue a new title in its name.

On June 30, 2005 the RTC issued an Order<sup>[15]</sup> granting the *ex parte* motion. Alfredo filed a motion for reconsideration, which the Bank opposed.

During the pendency of the motion, the Bank filed another Urgent *Ex Parte* Motion to Modify Order<sup>[16]</sup> dated June 30, 2005 praying that an Order be issued directing the Register of Deeds of Makati City to cancel not only the original TCT No. S-3151, but also the original duplicate owner's certificate of title.

On August 25, 2005, the RTC issued an Order<sup>[17]</sup> granting the second *ex parte* motion. Alfredo filed a motion for reconsideration, which the Bank also opposed.

On December 1, 2005, the RTC issued an Order<sup>[18]</sup> denying both motions.

Consequently, the Bank was able to effect the cancellation of TCT No. S-3151 with the Register of Deeds of Makati City, as well as cause the issuance of TCT No. 221703<sup>[19]</sup> in its name.

The Spouses Ching then filed a petition for *certiorari* before the CA, docketed as CA-G.R. SP No. 93199, questioning the Orders of the RTC dated June 30, 2005, August 25, 2005, and December 1, 2005, claiming that these were issued with grave abuse of discretion on the part of the RTC judge.

While the case was pending before the CA, and on account of there having been no temporary restraining order or writ of preliminary injunction issued, the Bank filed an Urgent *Ex Parte* Motion to Resolve Motion for Designation of Another Sheriff to Serve/Enforce Writ of Possession/Court Processes.<sup>[20]</sup> The motion was stamped as received by the RTC on March 29, 2006. However, it appears that in its Order<sup>[21]</sup> dated March 28, 2006, or a day before the motion was filed, the RTC already granted the urgent *ex parte* motion.

In relation thereto, Alfredo filed an Urgent Motion to Recall and Set Aside Order<sup>[22]</sup> dated March 28, 2006, which the Bank opposed.

On May 2, 2006, the RTC issued an Order<sup>[23]</sup> denying the motion. Alfredo filed a motion for reconsideration, but it was denied in the Order<sup>[24]</sup> dated August 18, 2006.

Aggrieved, Alfredo filed a petition for *certiorari* before the CA, docketed as CA-G.R. SP No. 96675.

On July 31, 2008, the CA rendered a Decision<sup>[25]</sup> affirming the Orders of the RTC and dismissing the petition for lack of merit. Alfredo filed a motion for reconsideration, but it was denied in the Resolution<sup>[26]</sup> dated June 19, 2009.

In affirming the assailed Orders of the RTC, the CA opined that since the urgent *ex parte* motion of the Bank merely sought for the designation of another sheriff to enforce the writ of possession previously issued by the court, it is a non-litigious motion which may be acted upon by the RTC *ex parte* without prejudice to the rights of Alfredo. As regards the discrepancy between the date of filing the *ex parte* motion and the date of the issuance of the RTC Order, the CA held that considering that the said issue was only raised for the first time before the CA, the issue could not be touched upon without violating the rule on due process. It stressed that an issue which was not averred in the complaint cannot be raised for the first time on appeal.

In addition, the CA ruled that title and ownership to the property is consolidated upon the lapse of the period of redemption. It is automatic upon the failure of the judgment obligor to exercise his right of redemption within the period allowed by law. Thus, title may be consolidated in the name of the purchaser even without a new title issued in his name. The term *title*, as used in consolidation, does not pertain to the certificate of title, or piece of paper, issued by the Register of Deeds, which is a mere evidence of ownership. It is synonymous with ownership.<sup>[27]</sup>

Hence, the petition docketed as **G.R. No. 188480**.

### ***The Court's Ruling***

Both petitions being interrelated, it is best to resolve the issues collectively. In *G.R. No. 167835*, the Spouses Ching raise the following issues:

- A. WHETHER OR NOT THE COURT OF APPEALS' DISMISSAL OF THE PETITION FOR *CERTIORARI* IN CA-G.R. SP NO. 82717 IS IN ACCORD WITH LAW AND/OR APPLICABLE DECISIONS OF THE HONORABLE SUPREME COURT.
- B. WHETHER OR NOT THE TRIAL COURT'S QUESTIONED RULINGS IN CIVIL CASE NO. 142309 ARE IN GRAVE ABUSE OF DISCRETION, ARE NOT IN ACCORD WITH LAW AND/OR APPLICABLE DECISIONS OF THE HONORABLE SUPREME COURT, AND WORK TO DO AN INJUSTICE TO HEREIN PETITIONERS.<sup>[28]</sup>