

## FIRST DIVISION

[ G.R. No. 146972, January 29, 2008 ]

**B & I REALTY CO., INC., Petitioner, vs. TEODORO CASPE and  
PURIFICACION AGUILAR CASPE, Respondents.**

### D E C I S I O N

**CORONA, J.:**

This petition for review on certiorari seeks to set aside the February 7, 2001 decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. C.V. No. 57273.

This case stems from two earlier complaints filed by Spouses Arsenio and Consorcia L. Venegas<sup>[2]</sup> against herein petitioner B & I Realty Co., Inc., respondent spouses Teodoro and Purificacion Aguilar Caspe, and a certain Arturo G. Datuin.<sup>[3]</sup>

Consorcia L. Venegas was the owner of a parcel of land located in Barrio Bagong-Ilog in Pasig, Rizal and covered by TCT No. 247434. She delivered said title to, and executed a simulated deed of sale in favor of, Datuin for purposes of obtaining a loan with the Rizal Commercial Banking Corporation (RCBC). Datuin claimed that he had connections with the management of RCBC and offered his assistance to Venegas in obtaining a loan from the bank. He issued a receipt to the Venegases, acknowledging that the lot was to be used as a collateral for bank financing and that the deed of sale (with a resolutive condition) was executed only as a device to obtain the loan.

However, Datuin prepared a deed of absolute sale and, through forgery, made it appear that the spouses Venegas executed the document in his favor. He was then able to have the TCT transferred to his name. Consequently, TCT No. 247434 was cancelled and a new title, TCT No. 377734, was issued to him by the register of deeds. Thereafter, he obtained a loan from petitioner in the amount of P75,000 using the title of the property as collateral for the loan. The mortgage was annotated at the back of the title.

Venegas learned of Datuin's fraudulent scheme when she sold the lot (subject of the mortgage) to herein respondents for P160,000 in a deed of conditional sale.<sup>[4]</sup> She, along with her husband, instituted a complaint against Datuin in the then Court of First Instance (CFI) of Rizal, Branch 11, docketed as Civil Case No. 188893, for recovery of property and nullification of TCT No. 377734, with damages. However, when the case was called for pre-trial, the Venegases' counsel failed to appear and the complaint was eventually dismissed without prejudice.

Thereafter, Venegas and her husband, respondents and Datuin entered into a compromise agreement whereby the Venegases agreed to sell and transfer the property to respondents with the condition that they (respondents) would assume and settle Datuin's mortgage debt to petitioner. The amount corresponding to the

unpaid mortgage would be deducted from the consideration.

As provided for in the agreement, Datuin executed a deed of absolute sale over the property covered by TCT No. 377734 in favor of respondents. On February 12, 1976, the respondents started paying their assumed mortgage obligation to petitioner.

However, on August 27, 1980, Venegas brought a new action before the CFI of Pasig, Branch 6, docketed as Civil Case No. 36852, for annulment of the transfer of the property to Datuin and *the declaration of nullity of all transactions involving and annotated on TCT No. 377734, including the mortgage executed in favor of petitioner*, as well as the cancellation of the conditional deed of sale to respondents. On January 10, 1986, the trial court ruled in favor of respondents, to wit:

WHEREFORE, judgment is hereby rendered in favor of the defendants spouses Teodoro Caspe and Purificacion A. Caspe on their counterclaims and ordering the complaint of plaintiffs [spouses Venegas] as well as the counterclaims of B & I Realty Co, Inc. dismissed. Arturo G. Datuin is ordered to pay the damages suffered by the defendants-Caspe[s] PhP10,000.00 as compensatory and consequential damages; PhP5,000.00 moral damages and PhP5,000.00 attorney's fees and to pay the costs.

The sale between Consorcio Venegas and Arturo G. Datuin is declared void from the beginning. Consequently, the transfer of title no. 247434 from Venegas to Datuin is hereby ordered non-existent and Transfer Certificate of Title No. 377734 in the name of Arturo G. Datuin is hereby cancelled. The Conditional Deed of Sale between the Venegas and the Caspes is declared valid and approved. All payments of Caspes to Venegas or agents, to Datuin and to B & I Realty Co. Inc. are considered part of the PhP160,000.00 consideration or purchase price.

The mortgage between Datuin and the B & I Realty Co., Inc. is hereby declared cancelled and B & I Realty Co., Inc. is hereby ordered to deliver the title to the Caspes upon the latter paying said financing company the remaining balance of PhP15,132.00. The Register of Deeds of Rizal is hereby ordered to cancel Transfer Certificate of Title No. 377734 in the name of Arturo G. Datuin and in lieu to issue a new title in the name of Teodoro Caspe and Purificacion A. Caspe.

Petitioner interposed an appeal to the CA. On October 31, 1989, the CA held that all pronouncements in the aforesaid CFI decision pertaining to petitioner had no binding effect on it. It reasoned that the appealed decision adversely affected petitioner on the basis of evidence presented ex-parte by respondents without according the former the opportunity to controvert the same, in violation of the due process clause. However, the CA affirmed the rest of the judgment.<sup>[5]</sup>

Respondents filed a motion for reconsideration<sup>[6]</sup> which was denied on January 25, 1990.<sup>[7]</sup> It became final and executory as respondents did not appeal the denial thereof.

On May 12, 1993, petitioner sent a demand letter to respondents for the payment of their loan. The latter refused to pay.

On August 27, 1993, petitioner filed an action for judicial foreclosure of mortgage, the subject of the instant petition for review, against respondents before the Regional Trial Court (RTC), Branch 166, Pasig City. It was docketed as SCA 447. In their *answer*, respondents argued that the action had already prescribed.

On August 26, 1997, the RTC ruled in favor of petitioner. The trial court held that the defense of prescription could not prosper as it was not pleaded by respondents in their *motion to dismiss*.

Respondents appealed to the CA which reversed the RTC decision and dismissed petitioner's action for judicial foreclosure. It stated that, although the defense of prescription was not pleaded in the motion to dismiss,<sup>[8]</sup> the same was, however, pleaded in the answer<sup>[9]</sup> and in their motion to set case for hearing on the special affirmative defenses.<sup>[10]</sup> As such, respondents could not have waived the defense of prescription. The CA further held that the action had indeed prescribed. It cited Section 1, Rule 9 of the 1997 Rules of Court:

Section 1. Defenses and objections not pleaded. - Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. **However, when it appears from the pleadings or the evidence on record** that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or **that the action is barred** by a prior judgment or **by statute of limitations, the court shall dismiss the claim.** (emphasis supplied by the CA)

Petitioner questioned the CA ruling that respondents did not waive the defense of prescription. It argued that, as its complaint for judicial foreclosure of mortgage was filed on August 27, 1993 before the effectivity of the 1997 Rules of Court, the provision did not apply to the instant case. It invoked the old rule in the 1964 Rules of Court as basis that its cause of action had not yet prescribed.

Petitioner's contention is untenable.

Before addressing the merits of the controversy, we shall first discuss a preliminary matter relating to the application of the mode of appeal under Rule 45 of the Rules of Court.

It should be noted that the jurisdiction of this Court in a petition for review on certiorari under Rule 45 is limited only to questions of law. This Court is not a trier of facts. The findings of fact of the CA are binding and conclusive on this Court. However, the application of this rule is not absolute and admits of certain exceptions. For instance, factual findings of the CA may be reviewed by this Court when the findings of fact of the RTC and the CA are conflicting.<sup>[11]</sup> In this case, the RTC held that the action had already prescribed; the CA ruled otherwise. Thus, although the petition now before us involves a question of fact, that is, whether or not the action for judicial foreclosure of mortgage has already prescribed, we may still rule on the same.

We now proceed to the merits of this controversy.

On one hand, the CA erred when it held that there was no waiver of the defense of prescription even if it was invoked only in the answer and in the motion to set case for hearing on the affirmative defenses, and not in the motion to dismiss, because it should have been raised at the earliest possible time, in this case, in the motion to dismiss. Thus, it was deemed waived in accordance with the "omnibus motion rule."<sup>[12]</sup>

On the other hand, however, the CA was correct in applying the 1997 Rules of Court. Procedural laws may be given retroactive application in cases of actions pending and undetermined at the time of their passage.<sup>[13]</sup> In this case, the action was still pending in the RTC when the 1997 Rules of Court was promulgated on July 1, 1997. The RTC decided the case on August 26, 1997. Thus, retroactive application of the 1997 Rules was proper. Ultimately, the CA did not commit any error when it granted respondents' appeal. It correctly applied the 1997 Rules of Court and rightly ruled in favor of prescription as the same was supported by the evidence on record.

In fact, it was the evidence of the petitioner itself which proved that prescription had set in:

1. a duplicate original of the deed of real estate mortgage,<sup>[14]</sup> executed by Arturo G. Datuin, showing that the mortgage was executed on May 17, 1973. This deed of real estate mortgage expressly provided that the mortgage loan (was to) be repaid within one year from the date thereof, or on May 17, 1974.
2. a duplicate original of the promissory note,<sup>[15]</sup> executed by Datuin on May 17, 1973, showing that he was indebted to petitioner in the amount of P75,000 secured by a deed of real estate mortgage.
3. a machine copy of the compromise agreement,<sup>[16]</sup> dated June 11, 1975, executed by spouses Venegas, Datuin and respondents, showing that the mortgaged property was sold and transferred to respondents on the condition that they would assume and settle in full Datuin's mortgage loan to petitioner.
4. a machine copy of the deed of absolute sale,<sup>[17]</sup> dated October 30, 1975, showing the sale of the mortgaged property between Arturo G. Datuin and respondents. In this instrument, respondents acknowledged their assumption of Datuin's mortgage.
5. a statement of account of defendants<sup>[18]</sup> showing the computation of the interests and service fees on the loan. In the said statement of account, payments made by respondents to petitioner were duly reflected. The series of payments began on February 12, 1976 and ended on January 14, 1980.
6. the complaint for judicial foreclosure of real state mortgage was instituted on August 27, 1993.

Article 1142 of the Civil Code provides: