

## SECOND DIVISION

[ G.R. No. 171373, June 18, 2008 ]

**LLOYD'S ENTERPRISES AND CREDIT CORPORATION,  
PETITIONERS, VS. SPS. FERDINAND AND PERSEVERANDA  
DOLLETON, RESPONDENTS.**

### DECISION

**TINGA, J.:**

This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, assailing the Decision<sup>[1]</sup> and Resolution<sup>[2]</sup> of the Court of Appeals in CA-G.R. CV No. 82017. The Court of Appeals' decision affirmed with modification the decision of the Regional Trial Court (RTC) of Muntinlupa City, Branch 276 in Civil Case No. 98-086 which, among others, nullified the property sale between herein respondents and defendant Blesilda Gagan (Gagan) and the subsequent mortgage to petitioner and foreclosure of the subject property.

Respondents, spouses Ferdinand and Perseveranda Dolleton, were the registered owners of a parcel of land situated in Barangay Putatan, Muntinlupa City and covered by Transfer Certificate of Title (TCT) No. 153554. Erected on the 166-sq m property is a four-door apartment building being leased by respondents to various tenants. On 9 August 1990, respondents mortgaged the property to a certain Joseph Patrick Santos (Santos) to secure a loan in the amount of P100,000.00. Upon payment of the loan on 15 August 1994, Santos executed a release and cancellation of the mortgage. The same was annotated on the TCT.

On 15 September 1994, TCT No. 153554 in the name of respondents was cancelled and a new TCT No. 197220 was issued in the name of Gagan on the basis of a Deed of Absolute Sale dated 5 August 1994 whereby respondents purportedly sold to Gagan the subject property for the sum of P120,000.00.

On 19 September 1994, petitioner Lloyd's Enterprises and Credit Corporation lent to Gagan and her live-in partner, a certain Feliciano Fajardo Guevarra (Guevarra) the sum of P391,512.00. The loan was secured by a real estate mortgage on the subject property, which was duly annotated on TCT No. 197220 on 27 September 1994. After payment of the loan, petitioner executed a Cancellation of Mortgage, which was annotated on the same TCT on 14 September 1995. On even date, petitioner granted another loan to Gagan and Guevarra for a bigger sum of P542,928.00, as evidenced by a promissory note dated August 1995. A new real estate mortgage was constituted over the property. This undated mortgage deed appears to have been notarized in 1995. The second real estate mortgage was likewise annotated on the TCT on 14 September 1995.

Gagan and Guevarra failed to pay the second loan upon its maturity. Thus, petitioner instituted extrajudicial foreclosure proceedings on the subject property. At

the auction sale conducted by Sheriff-in-charge Melvin T. Bagabaldo, petitioner's bid of P645,000.00 was declared the highest.<sup>[3]</sup> The property was not redeemed within the one-year period, hence, ownership was consolidated in favor of petitioner. On 29 September 1997, TCT No. 197220 in the name of Gagan was cancelled and TCT No. 210363 was issued in the name of petitioner.

Petitioner sent notices to the apartment tenants informing them about the transfer of the property to petitioner and allowing them the option either to vacate the apartment or to pay a monthly rental of P2,000.00. Thus, the apartment tenants did not remit the rentals to respondents anymore, prompting the latter to cause the annotation of an adverse claim on TCT No. 210363 on 15 December 1997.

On 7 May 1998, respondents filed a complaint, praying among others for the nullification of the Deed of Absolute Sale, the two real estate mortgage contracts and the extrajudicial foreclosure proceedings; the cancellation of TCT Nos. 197220 and 210363; and the restoration of TCT No. 153554 in the name of respondents.<sup>[4]</sup> Named defendants were Gagan, Guevarra, herein petitioner, the Sheriff-in-charge of the RTC of Muntinlupa and the Office of the Register of Deeds for Makati.

In the said complaint,<sup>[5]</sup> respondents denied having executed the Deed of Absolute Sale and alleged that they had merely offered to sell to defendant Gagan the subject property for P900,000.00 on installment basis so that they could pay their loan obligation to Santos. They averred that after defendant Gagan had initially paid P200,000.00, they entrusted the owner's copy of TCT No. 153554 to defendant Gagan who however undertook to effect the cancellation of the mortgage in favor of Santos and to prepare the contract of sale on installment basis. Respondents further alleged that except for the additional amount of P185,000.00, defendant Gagan was unable to pay the balance of the purchase price. They also accused Gagan of having caused the fraudulent cancellation of TCT No. 153554 and the issuance of TCT No. 197220 in her name, and of eventually using TCT No. 197220 to secure the loans obtained from petitioner. Respondents also faulted petitioner for failing to make adequate inquiries on the true ownership of the property considering the suspicious circumstances surrounding Gagan's and Guevarra's request for loan immediately after the issuance of the new certificate of title.

The summons on defendants Gagan and Guevarra were returned unserved as their whereabouts were unknown. Upon motion by respondents, the RTC directed the issuance and service of alias summons by publication.<sup>[6]</sup> Subsequently, defendants Gagan and Guevarra were declared in default for failure to file their responsive pleading to the complaint that was published in a newspaper of general circulation.<sup>[7]</sup>

In its answer with counterclaim,<sup>[8]</sup> petitioner raised the defense of lack of cause of action, asserting that it exercised due diligence in verifying the status of the subject property and that it would not have accepted the same as security for the loan if the title were not clean. It also claimed that respondents were guilty of estoppel by laches as they failed to take the necessary measures to protect their rights and interest. Petitioner also filed an amended answer with counterclaim, which included a cross-claim against defendants Gagan and Guevarra for the amount of the purchase price at the foreclosure sale and for the litigation expenses. Petitioner's cross-claim pleaded that in the event that its certificate of title over the subject

property be cancelled, defendants Gagan and Guevara should be held solidarily liable for P645,000.00, which is the amount petitioner paid at the foreclosure sale, plus additional expenses incurred in transferring the subject property and in defending its rights and interest as a consequence of the filing of the case.

After trial, the RTC rendered judgment declaring the Deed of Absolute Sale dated 5 August 1994 as spurious. The dispositive portion of the 8 November 2003 RTC Decision reads:

PREMISES CONSIDERED, this Court is not convinced that defendant Lloyd Enterprises and Credit Corporation is a mortgagee in good faith, the mortgage in their favor being illegal and fraudulently obtained with the use of a title issued thru misrepresentations and [a] forged document, did not confer ownership on the forger. The mortgage over this property, is not a valid encumbrance, which did not give a right to the said defendant, to foreclose and take ownership. The loan not obtained by the true owners of the property, equity and fairness demands that they should not suffer from that unfaithful conveyance, much more, forfeit ownership of their parcel of land and the improvements thereon. Defendants had the unconscionable and unscrupulous intentions to get the land with improvement, hence neglected to check its ownership, are not mortgagees in good faith.

Defendants are therefore directed to reconvey the property to the true and genuine owners, the spouses Ferdinand and Perseveranda Dolleton, not being mortgagees in good faith, while the mortgage itself over a parcel not owned by the mortgagors, did not confer a valid mortgage. It cannot be a basis of a valid foreclosure. It is not even legally recorded, hence no date to reckon the maturity of their loan.

Defendants are further directed to remit payment of rental of the property to the plaintiffs from December 1998 to the present on the rental sum equal to the totality of the monthly rental from the said date to the present, at the amount being paid and received by the Defendant from the tenants of the apartments, or in the total sum of P525,600.00.

Plaintiffs are also entitled to moral damages in the amount of P300,000.00 with exemplary damages in the amount of P300,000.00.

Since plaintiffs were forced to prosecute this claim, Plaintiffs incurred actual expenses of P50,000.00 which should be refunded to them by defendant.

Plaintiffs were also forced to litigate to defend and enforce their rights of ownership over this parcel of land subject of this litigation, attorney's fees of P100,000.00 is also adjudged against defendant, as well as the cost of this litigation.

IT IS SO ORDERED.<sup>[9]</sup>

On 20 December 2005, the Court of Appeals rendered the assailed decision, modifying the award of moral and exemplary damages from P300,000.00 for both

respondents to P200,000.00 for each of the respondents. The appellate court rejected the RTC's factual finding that the two loans were granted simultaneously to defendants Gagan and Guevarra. Just the same, it upheld the finding that the Deed of Absolute Sale was a forgery and that petitioner was grossly negligent in accepting the mortgage as security for the loan. In a Resolution<sup>[10]</sup> dated 6 February 2006, the Court of Appeals denied petitioner's Motion for Reconsideration<sup>[11]</sup> for lack of merit.

Petitioner filed a Petition for Review on Certiorari,<sup>[12]</sup> which the Court initially denied in a Resolution dated 5 June 2006 on the ground that the issues raised are factual and that the petition failed to sufficiently show that the appellate court committed any reversible error. Petitioner filed a motion for reconsideration, which was granted in a Resolution dated 28 August 2006. The said resolution also directed the reinstatement of the petition and the filing of a comment thereon.

The instant petition raises the following arguments:

- I. WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN LAW WHEN IT FAILED TO DECLARE PETITIONER AS MORTGAGEE IN GOOD FAITH AS THE LATTER TOOK THE NECESSARY STEPS WHICH AN ORDINARY AND PRUDENT MAN WOULD HAVE TAKEN BEFORE BUYING THE PROPERTY IN QUESTION;
- II. WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT RULED THAT THE PETITIONER IS LIABLE FOR DAMAGES WHEN THE RESPONDENT IS NOT ENTIRELY WITHOUT FAULT;
- III. WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT FAILED TO RULE ON THE LIABILITY OF THE GAGANS IN THIS CASE;
- IV. WHETHER OR NOT THE AMOUNT OF DAMAGES AWARDED BY THE HONORABLE COURT OF APPEALS IS CONSISTENT WITH THE EXISTING JURISPRUDENCE AND NORMS OF MORALITY.<sup>[13]</sup>

First, petitioner insists that it is a mortgagee in good faith because it is not privy to the transaction between respondents and defendant Gagan or to the source of the invalid title.

Whether petitioner is a mortgagee-purchaser in good faith and for value is a factual issue. In a petition for review, only questions of law may be raised. Even though there are exceptions, petitioner did not show that this case is one of them.<sup>[14]</sup> Moreover, the RTC and the Court of Appeals concur that petitioner did not exercise due diligence in ascertaining the true ownership of the subject property, notwithstanding the existence of circumstances which should have impelled it to investigate further. Well-settled is the rule that factual findings of the RTC, when affirmed by the Court of Appeals, are accorded great weight and respect by this Court.

We quote with approval the following observations of the Court of Appeals:

In this case, appellant LECC merely submitted in evidence forms for credit investigation haphazardly accomplished by its supposed credit