

## THIRD DIVISION

[ G.R. No. 176929, July 04, 2008 ]

**INOCENCIO Y. LUCASAN FOR HIMSELF AND AS THE JUDICIAL ADMINISTRATOR OF THE INTESTATE ESTATE OF THE LATE JULIANITA SORBITO LUCASAN, PETITIONER, VS. PHILIPPINE DEPOSIT INSURANCE CORPORATION (PDIC) AS RECEIVER AND LIQUIDATOR OF THE DEFUNCT PACIFIC BANKING CORPORATION, RESPONDENT.**

### DECISION

**NACHURA, J.:**

On appeal is the March 23, 2006 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 81518, affirming the July 24, 2003 Order<sup>[2]</sup> of the Regional Trial Court (RTC) of Bacolod City, Branch 43, granting respondent's motion to dismiss, as well as its subsequent Resolution<sup>[3]</sup> denying petitioner's motion for reconsideration.

The factual antecedents are as follows.

Petitioner Inocencio Y. Lucasan (Lucasan) and his wife Julianita Sorbito (now deceased) were the owners of Lot Nos. 1500-A and 229-E situated in Bacolod City, respectively covered by TCT Nos. T-68115 and T-13816.

On August 3, 1972, Pacific Banking Corporation (PBC) extended a P5,000.00 loan to Lucasan, with Carlos Benares as his co-maker. Lucasan and Benares failed to pay the loan when it became due and demandable. Consequently, PBC filed a collection case with the RTC of Bacolod City, docketed as Civil Case No. 12188.

On April 30, 1979, the RTC rendered a decision ordering Lucasan and Benares to jointly and severally pay PBC P7,199.99 with interest at 14% per annum computed from February 7, 1979, until the full payment of the obligation. Lucasan failed to pay the monetary award; thus, to satisfy the judgment, the RTC issued a writ of execution directing the sheriff to effect a levy on the properties owned by Lucasan and sell the same at public auction.

In compliance with the writ, the City Sheriff of Bacolod issued a Notice of Embargo on January 8, 1981, which was annotated on Lucasan's TCT Nos. T-68115 and T-13816 as Entry No. 110107. Annotated as prior encumbrances on the same titles were the mortgages in favor of Philippine National Bank (PNB) and Republic Planter's Bank (RPB) executed to secure Lucasan's loans with the banks.

On May 13, 1981, the lots were sold at public auction and were awarded to PBC as the highest bidder. A certificate of sale was executed in its favor and was registered and annotated on TCT Nos. T- 68115 and T-13816 as Entry No. 112552 on June 5, 1981. Neither PNB nor RPB, the mortgagees, assailed the auction sale.

Lucasan, as well as the mortgagee banks, PNB and RPB, did not redeem the properties within the redemption period. Nevertheless, PBC did not file a petition for consolidation of ownership.

In January 1997, Lucasan, through counsel, wrote a letter to the Philippine Deposit Insurance Corporation (PDIC), PBC's receiver and liquidator seeking the cancellation of the certificate of sale and offering to pay PBC's claim against Lucasan.<sup>[4]</sup>

Not long thereafter, Lucasan paid his loans with the PNB and RPB. Consequently, the mortgagee banks executed their respective releases of mortgage, resulting in the cancellation of the prior encumbrances in favor of PNB and RPB.

On August 13, 2001, PDIC denied Lucasan's request for the cancellation of the certificate of sale stating:

Please be informed that based on our records, TCT Nos. T-68115 and T-13816 have already become part of the acquired assets of Pacific Banking Corporation by virtue of a Certificate of Sale dated May 13, 1981 executed by the City Sheriff of Bacolod. Subsequently, this document was registered on the titles on June 5, 1981 so that the last day of the redemption period was June 5, 1982.

With regard to your request, we regret to inform you that reacquisition of the subject properties have to be through sale following PDIC's policy on disposal. Accordingly, these properties can be disposed through public bidding using the latest appraised value in the total amount of P2,900,300.00 as of March 29, 2000 as a minimum bid. If you are still interested to acquire the properties, please get in touch with our Asset Management Group x x x.<sup>[5]</sup>

Lucasan then filed a petition denominated as *declaratory relief* with the RTC of Bacolod City docketed as Civil Case No. 02-11874.<sup>[6]</sup> He sought confirmation of his rights provided in the second paragraph of Section 1, Rule 63 of the Rules of Court in relation to Section 75 of Presidential Decree (P.D.) No. 1529. Lucasan also pleaded for the lifting and/or cancellation of the notice of embargo and the certificate of sale annotated on TCT Nos. T-68115 and T-13816, and offered to pay P100,000.00 or such amount as may be determined by the RTC, as consideration for the cancellation.

PDIC moved to dismiss the complaint for lack of cause of action. It averred that an action to quiet title under Section 1 of Rule 63 may only be brought when there is a cloud on, or to prevent a cloud from being cast upon, the title to real property. It asseverated that a cloud on the title is an outstanding instrument record, claim, encumbrance or proceeding which is actually invalid or inoperative, but which may nevertheless impair or affect injuriously the title to property. PDIC claimed that the notice of embargo was issued pursuant to a writ of execution in Civil Case No. 12188, while the certificate of sale was executed as a result of a public bidding. Thus, their annotations on the titles were valid, operative or effective. PDIC asserted that Lucasan's petition is nothing but a disguised attempt to compel PDIC to resell the properties at a reduced price of P100,000.00. Accordingly, it prayed for the dismissal of the petition.<sup>[7]</sup>

Lucasan opposed the motion.<sup>[8]</sup> He countered that the subject properties were still in his possession, and neither PBC nor PDIC instituted an action for consolidation of ownership. Since the certificate of title was still in his name, he contended that he could pursue all legal and equitable remedies, including those provided for in Section 1, Rule 63 of the Rules of Court to reacquire the properties. He also claimed that PDIC's policy of disposing the subject properties through public bidding at the appraised value of P2,900,300.00 was unjust, capricious and arbitrary, considering that the judgment debt amounted only to P7,199.99 with interest at 14% per annum. Lucasan urged the RTC to apply the liberal construction of the redemption laws stressed in *Cometa v. Court of Appeals*.<sup>[9]</sup>

In its Order<sup>[10]</sup> dated July 24, 2003, the RTC granted PDIC's motion to dismiss, thus:

The clouds contemplated by the provision of law under Article 476 of the Civil Code is one where the instrument, record, claim, encumbrance or proceeding is apparently valid or effective on its face that nothing appears to be wrong, but in reality, is null and void. Hence, the petition filed by [Lucasan] pursuant to the said article is equivalent to questioning the validity of the subsequent annotation of Entry No. 110107 and Entry No. 112522 in TCT Nos. T-13816 and T-68115.

Records disclose that Entry No. 110107 which is a Notice of Embargo was issued by virtue of a valid judgment rendered in Civil Case No. 12188 entitled "Pacific Banking Corporation vs. [Inocencio] Lucasan, et al.," whereby the Court found [Lucasan] liable in favor of [PBC] the sum of P7,199.99 with 14% interest per annum to be computed from February 7, 1979 until fully paid.

As mandated in Sec. 12, Rule 39 of the Revised Rules of Court, such levy on execution create a lien in favor of [PBC] over the right, title and interest of [Lucasan] over the two (2) subject parcels of land covered by TCT Nos. T-13816 and T-68115, subject to liens and encumbrances then existing. The fact that [Lucasan] has redeemed the mortgage properties from the first mortgages (sic), PNB and PNB (sic) Republic Bank, does not vest him any title free from the lien of [PBC].

While the law requires that the judgment debtor, [Lucasan] must be served with a notice of levy and even if not served therewith, the defect is cured by service on him of the notice of sale prior to the sale, nowhere in the petition which alleges that [Lucasan] refutes the validity of the execution sale. Thus, he is deemed to have received and recognized the same.

As support for his thesis, [Lucasan] cites the case of Balanga vs. Ca., et al. (supra). However this Court is unable to agree that it is applicable to the present case. As correctly argued by [PDIC], in that case the proceedings under execution suffered infirmity from the very start as the levy and sale made by the sheriff of the land of petitioner Balanga included the house erected on the land [and] constituted as a family

home which, under the law, exempt from execution. In the case at bar, no objection was interposed by [Lucasan] as a valid levy has been made pursuant to Sec. 7, Rule 57 of the Revised Rules of Court, as a consequence of which, the sale made pursuant to Sec. 11 of the same rule is also valid and effective.<sup>[11]</sup>

The dispositive portion of the RTC Order reads:

**WHEREFORE**, finding the claim of any cloud over the titles of [Lucasan] to be bereft of basis in fact and in law, the Motion to Dismiss filed by [PDIC] is granted. Accordingly, this is hereby ordered **DISMISSED**

**SO ORDERED.**<sup>[12]</sup>

Lucasan filed a motion for reconsideration, but the RTC denied it on October 20, 2003.<sup>[13]</sup>

On appeal, the CA affirmed *in toto* the RTC ruling. It declared that Lucasan already lost his right to redeem the properties when he failed to exercise it within the prescribed period. The effect of such failure was to vest in PBC absolute ownership over the subject properties.<sup>[14]</sup>

The CA disposed, thus:

**WHEREFORE**, in view of all the foregoing premises, the appeal is hereby **DENIED**. Accordingly, the assailed Order of the Regional Trial Court of Bacolod City, Branch 43 dated 24 July 2003 dismissing [Lucasan's] Petition for Declaratory Relief and the subsequent Order of the same Court dated 20 October 2003 denying [Lucasan's] motion for reconsideration from the Order of Denial (sic) are hereby affirmed in toto. No costs.

**SO ORDERED.**<sup>[15]</sup>

Lucasan sought a reconsideration of the CA Decision, but the same was denied on February 7, 2007.<sup>[16]</sup>

Before us, Lucasan impugns the CA Decision on the following grounds:

1- THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN AFFIRMING THE ORDER OF DISMISSAL OF THE PETITIONER'S PETITION IN THE REGIONAL TRIAL COURT WHEN IT DISREGARDED THE CLEAR PROVISION OF SECTION 75 OF PRESIDENTIAL DECREE NO. 1529 AND PUT TO NAUGHT THE APPLICABLE JURISPRUDENCE IN *ZACARIAS COMETA* x x x AND THE CASES CITED THEREIN, INSPITE (sic) OF THE CLEAR AND OUTSTANDING SIMILARITY OF FACTS WITH THE CASE UNDER CONSIDERATION.

2- THE COURT OF APPEALS ALSO ERRED AND GRAVELY ABUSED ITS DISCRETION WHEN IT FAILED TO CONSIDER THAT THE NOTICE OF EMBARGO AND CERTIFICATE OF SALE ISSUED BY THE CITY SHERIFF WERE ONLY LEVY ON THE INTEREST OF THE PETITIONER ON THE TWO