

SECOND DIVISION

[G.R. No. 148514, November 26, 2002]

**LUCRATIVE REALTY AND DEVELOPMENT CORPORATION,
PETITIONER, VS. RICARDO C. BERNABE JR., RESPONDENT.**

D E C I S I O N

BELLOSILLO, J.:

This petition for certiorari assails the *Decision* of 23 October 2000^[1] of the Court of Appeals as well as its *Resolution* of 31 May 2001^[2] rejecting the imputation of grave abuse of discretion on the part of Judge Vicente A. Hidalgo in denying the demurrer to evidence of petitioner Lucrative Realty and Development Corporation (LUCRATIVE REALTY) and its motion to inhibit him for the reason that his actuations were within the limits of his discretion.

On 28 May 1961 spouses Ambrocio and Lourdes Baal entered into a contract of lease with Fil Oil Refinery Corporation (FILOIL) whereby the firm leased from the couple a parcel of land located at corner Agno Street and Quirino Avenue, Malate, Manila, with an area of 1,762.50 square meters for a period of ten (10) years renewable for another five (5) years at the option of the lessee. After the execution of the contract FILOIL immediately constructed a gasoline station on the leased premises.

Sometime in 1969 respondent Ricardo Bernabe Jr. acquired the right to manage and operate the gasoline station. Some years later the assets of FILOIL, including the Malate gasoline station being operated by respondent, were taken over by Petron Corporation (PETRON). Respondent Bernabe Jr. however was allowed to continue with its operation.

On 28 November 1977 the Baal spouses obtained a loan of ₱750,000.00 from the Home Savings Bank and Trust Company (HOME SAVINGS) and as security therefor executed a real estate mortgage over two (2) of their properties, a parcel of land located in Caloocan, and the Malate property subject of this controversy.

A year later the spouses were granted by HOME SAVINGS an additional credit of ₱135,000.00 for which the deed of real estate mortgage the spouses earlier executed was amended to increase the secured loan obligation to ₱885,000.00.

In August 1980, with the expiration of the 1961 lease contract, the Baal spouses entered a new contract of lease with respondent Bernabe Jr. for a period of ten (10) years and granting respondent explicitly the right of first refusal in the event the leased property would be sold.

Sometime in 1989 the obligation of the spouses with the bank became overdue. HOME SAVINGS was thus constrained to extrajudicially foreclose the mortgage on the Caloocan and Malate properties and a public auction was scheduled for their

disposition. As sole bidder HOME SAVINGS was awarded the ownership of the properties and a certificate of sale was issued in its favor.

Meanwhile, in an effort to prevent the foreclosure of the mortgaged properties, the Baal spouses instituted an action to enjoin the scheduled auction sale. When the case was being tried the parties entered into a compromise agreement whereby HOME SAVINGS agreed to accept the Malate property as full satisfaction of the spouses' obligation; accordingly, the Caloocan property was released from the mortgage. Pursuant further to their compromise agreement, the Baals executed on 29 December 1989 a *dacion en pago* transferring ownership of the Malate property to HOME SAVINGS. On the very same day, HOME SAVINGS acquired the property it sold the same to petitioner LUCRATIVE REALTY.

Sometime in January 1990 HOME SAVINGS wrote respondent Bernabe Jr. telling him to pay henceforth his leased rentals directly to the bank. Believing that HOME SAVINGS had already foreclosed the mortgage, respondent Bernabe invoked his right of first refusal to purchase the Malate property. On 7 March 1990 HOME SAVINGS denied the offer of respondent to exercise his right of first refusal claiming that it acquired the property from the Baal spouses through *dacion en pago* and not through sale. A year later, or on 1 May 1991, HOME SAVINGS wrote respondent to vacate the property as his lease would not be renewed.

Aggrieved, respondent filed a complaint for annulment of sale with prayer for the issuance of a writ of preliminary injunction against petitioner LUCRATIVE REALTY, HOME SAVINGS and Lourdes Baal.^[3] In his complaint, respondent alleged that even before HOME SAVINGS foreclosed the mortgage on the Malate property, he had already notified the bank of his right of first refusal as well as his intention to redeem it. He attributed bad faith on the part of LUCRATIVE REALTY, HOME SAVINGS and the spouses Baal in hastening the transfer of the property in favor of petitioner to deny him his right to purchase the leased premises. In support of his complaint respondent emphasized that even after selling the Malate property in favor of petitioner LUCRATIVE REALTY, HOME SAVINGS in palpable bad faith continued to represent itself as owner of the property.

After the complaint was filed, the trial court conducted hearings to determine the propriety of the issuance of the writ of preliminary injunction prayed for by respondent. The parties were required to submit their memoranda in support of their respective positions. While respondent invoked his right of first refusal to purchase the contested property, petitioner LUCRATIVE REALTY insisted that respondent's "so-called preferential right" did not constitute a valid and binding contract because it was not supported by a consideration.

After the parties were heard on the matter of the issuance of a writ of preliminary injunction, the trial court ruled that the application for injunctive relief would be resolved after the presentation of respondent's evidence in chief.

Meanwhile, on 24 February 1992 petitioner LUCRATIVE REALTY instituted an ejectment suit in the Metropolitan Trial Court of Manila against respondent Bernabe Jr. After trial, judgment was rendered ordering respondent to vacate the contested property.^[4] Respondent appealed to the Regional Trial Court which rendered a contrary opinion and found him entitled to the possession of the disputed property.^[5] Consequently, petitioner elevated his case to the Court of Appeals.