

## FIRST DIVISION

[ G.R. No. 133366, August 05, 1999 ]

### UNIONBANK OF THE PHILIPPINES, PETITIONER, VS. THE COURT OF APPEALS AND FERMINA S. DARIO AND REYNALDO S. DARIO, RESPONDENTS.

#### D E C I S I O N

##### DAVIDE, JR., C.J.:

Unionbank of the Philippines (hereafter UNIONBANK) appeals, by way of *certiorari*, the Decision<sup>[1]</sup> of the Court of Appeals (CA) of 26 June 1997 and its Resolution of 7 April 1998<sup>[2]</sup> The CA nullified the Regional Trial Court's (RTC) Order<sup>[3]</sup> of 7 August 1995 denying private respondents' application for preliminary injunction as UNIONBANK's consolidation of ownership divested private respondents of their property without due process of law. It also ordered the register of deeds to cancel UNIONBANK's title and the trial court to hear private respondents' prayer for injunctive relief.

This case stemmed from a real estate mortgage executed on 17 December 1991 by spouses Leopoldo and Jessica Dario (hereafter mortgagors) in favor of UNIONBANK to secure a P3 million loan, including interest and other charges. The mortgage covered a Quezon City property with Transfer Certificate of Title (TCT) No. 41828 in Leopoldo Dario's name and was annotated on the title on 18 December 1991. For non-payment of the principal obligation, UNIONBANK extrajudicially foreclosed the property mortgaged on 12 August 1993 and sold the same at public auction, with itself posting the highest bid.

On 4 October 1994, one week before the one-year redemption period expired, private respondents filed a complaint with the RTC of Quezon City against the mortgagors, UNIONBANK, the Register of Deeds and the City Sheriff of Quezon City. Docketed as Civil Case No. Q-94-21830, the complaint was for annulment of sale and real estate mortgage with reconveyance and prayer for restraining order and prohibitory injunction. A notice of *lis pendens* was annotated on the title.

On 10 October 1994, RTC, Branch 81, through Presiding Judge (later CA Justice) Celia Lipana-Reyes, issued a temporary restraining order (TRO) enjoining the redemption of property within the statutory period and its consolidation under UNIONBANK's name. At a hearing four days later, UNIONBANK's counsel orally moved for dismissal of the complaint alleging that a certification of non-forum shopping as prescribed by SC Circular 4-94<sup>[4]</sup> is now Rule 7 Section 5 of the 1997 Rules of Civil Procedure.<sup>4</sup> was not attached thereto. Judge Lipana-Reyes settled the motion in favor of UNIONBANK and dismissed<sup>[5]</sup> the complaint on 17 October 1994.

Aggrieved, private respondents filed a motion for reconsideration<sup>[6]</sup> of the dismissal

on 20 October 1994 and prayed that they be permitted to amend their verified complaint to comply with the requisites of Circular 4-94. Upon the appointment of Judge Lipana-Reyes to the CA, pairing Judge Agustin S. Dizon took over the case and on 15 November 1994 allowed private respondents to incorporate the mandatory formal requirements of SC Administrative Circular 4-94 to their complaint.

In the meantime, without notifying private respondents, UNIONBANK consolidated its title over the foreclosed property on 24 October 1994. TCT No. 41828 was cancelled and TCT No. 120929 in UNIONBANK's name was issued in its stead.

Private respondents filed an amended complaint<sup>[7]</sup> on 9 December 1994, alleging that they, not the mortgagors, are the true owners of the property mortgaged and insisting on the invalidity of both the mortgage and its subsequent extrajudicial foreclosure. They claimed that the original title, TCT No. 61571, was entrusted to a certain Atty. Reynaldo Singson preparatory to its administrative reconstitution after a fire gutted the Quezon City Hall building. Mortgagor Leopoldo, private respondent Fermina's son, obtained the property from Atty. Singson, had the title reconstituted under his name without private respondents' knowledge, executed an ante-dated deed of sale in his favor and mortgaged the property to UNIONBANK.

On 19 December 1994, Judge Ignacio M. Capulong to whom this case was assigned admitted the aforementioned amended complaint and set the application for writ of preliminary injunction for hearing. After UNIONBANK's motion for reconsideration of said Order was denied on 17 January 1995, it filed a petition for *certiorari* with the CA questioning the admission of the amended complaint. The CA upheld Judge Capulong's order admitting the amended complaint on 24 April 1995, UNIONBANK thereafter elevated its cause to this Court.

Meanwhile, on 9 February 1995 UNIONBANK filed its answer *ad cautelam* asserting its status as an innocent mortgagee for value whose right or lien upon the property mortgaged must be respected even if the mortgagor obtained his title through fraud. It also averred that the action had become "moot and academic by the consolidation of the foreclosed property on 24 October 1994" in its name, resulting to the issuance of TCT No. 120929 by the Register of Deeds of Quezon City. In reaction to UNIONBANK's revelation, private respondents moved to declare UNIONBANK's counsel in indirect contempt attacking his disobedience to the TRO.

On 19 May 1995, private respondents moved to declare the other defendants in default for their non-filing of responsive pleadings within the mandatory period and to set the application for preliminary injunction and indirect contempt for pre-trial and trial.

On 14 June 1995 the second division of this Court denied the petition for *certiorari*, which it considered as a petition for review under Rule 45, "for failure to show that the CA had committed any reversible error" in judgment.

In its 19 August 1995 Order, the RTC held the mortgagors and the City Sheriff of Quezon City in default and sustained UNIONBANK's contention that the act sought to be enjoined had been enforced, negating the need of hearing the application for preliminary injunction. Private respondents filed a lengthy motion for reconsideration to this Order.

The annulment case was re-raffled to Branch 227 under Presiding Judge Vicente Q. Roxas upon the creation of new *salas*. Judge Roxas, on 25 March 1996, denied the motion to reconsider the 19 August 1995 Order but suggested that private respondents amend their application from prohibitory to mandatory injunction.

As private respondents were unable to amend their application, the RTC denied the motion for reconsideration and their motion for indirect contempt, "in the interest of free speech and tolerance" on 9 July 1996. Asserting grave abuse of discretion, private respondents brought the denial of their motion for reconsideration with the Court of Appeals on 6 September 1996.

After considering the arguments presented by the parties, the CA ruled that despite its knowledge that the ownership of the property was being questioned, UNIONBANK took advantage of private respondents' procedural error by consolidating title to the property, which "smack[ed] of bad faith" and "evinced a reprobate disposition of the part of its counsel to advance his client's cause by fair means or foul." As a result thereof the transfer of title was vitiated by non-adherence to procedural due process.<sup>[8]</sup>

On 26 June 1997, CA nullified the consolidation of ownership, ordered the Register of Deeds to cancel the certificate of title in UNIONBANK's name and to reinstate TCT No. 41828 with the notice of *lis pendens* annotated at the back. The CA also set aside the portion of the assailed RTC Orders that declared private respondents' prayer for writ of preliminary injunction as moot and academic. UNIONBANK's motion for reconsideration of the above-mentioned decision was likewise rejected for lack of merit on 7 April 1998.

Hence, UNIONBANK came to this Court claiming to be a mortgagee in good faith and for value with a right to consolidate ownership over the foreclosed property with the redemption period having expired and there having been no redemptioners. UNIONBANK contends that the TRO which provisionally enjoined the tolling of the redemption period was automatically dissolved upon dismissal of the complaint on 17 October 1994. Conformably, consolidation of title in its name and the issuance of TCT No. 120929 rendered further proceedings on the application for injunction academic. Moreover, the alleged fraudulent mortgage was facilitated through private respondents' negligence so they must bear the loss. It also contends that since private respondents had filed several pleadings, due process, being an opportunity to be heard either through pleadings or oral arguments, was observed.

Private respondents maintain that UNIONBANK's consolidation of the title in its name was in bad faith, vitiated a standing court order, is against the law, thus void *ab initio*. The application for preliminary injunction was not rendered moot and academic by consolidation, which took place during the lifetime of the TRO, and did not follow the proper legal procedure due to the surreptitious manner it was accomplished. By treating the application for preliminary injunction as moot and academic and denying the motion for indirect contempt without hearing, the RTC order ran afoul with the requirements of due process.

Two main issues can be gleaned from the posturing and claims of the parties, to wit, was the consolidation of title in UNIONBANK's name proper, and was the dismissal of the application for preliminary prohibitory injunction valid.