

## **FIRST DIVISION**

**[ G.R. No. 118342, January 05, 1998 ]**

**DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS.  
COURT OF APPEALS AND LYDIA CUBA, RESPONDENTS.**

**[G.R. NO. 118367. JANUARY 5, 1998]**

**LYDIA P. CUBA, PETITIONER, VS. COURT OF APPEALS,  
DEVELOPMENT BANK OF THE PHILIPPINES AND AGRIPINA P.  
CAPERAL, RESPONDENTS.**

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

**DAVIDE, JR., J.:**

These two consolidated cases stemmed from a complaint<sup>[1]</sup> filed against the Development Bank of the Philippines (hereafter DBP) and Agripina Caperal filed by Lydia Cuba (hereafter CUBA) on 21 May 1985 with the Regional Trial Court of Pangasinan, Branch 54. The said complaint sought (1) the declaration of nullity of DBP's appropriation of CUBA's rights, title, and interests over a 44-hectare fishpond located in Bolinao, Pangasinan, for being violative of Article 2088 of the Civil Code; (2) the annulment of the Deed of Conditional Sale executed in her favor by DBP; (3) the annulment of DBP's sale of the subject fishpond to Caperal; (4) the restoration of her rights, title, and interests over the fishpond; and (5) the recovery of damages, attorney's fees, and expenses of litigation.

After the joinder of issues following the filing by the parties of their respective pleadings, the trial court conducted a pre-trial where CUBA and DBP agreed on the following facts, which were embodied in the pre-trial order:<sup>[2]</sup>

1. Plaintiff Lydia P. Cuba is a grantee of a Fishpond Lease Agreement No. 2083 (new) dated May 13, 1974 from the Government;
2. Plaintiff Lydia P. Cuba obtained loans from the Development Bank of the Philippines in the amounts of P109,000.00; P109,000.00; and P98,700.00 under the terms stated in the Promissory Notes dated September 6, 1974; August 11, 1975; and April 4, 1977;
3. As security for said loans, plaintiff Lydia P. Cuba executed two Deeds of Assignment of her Leasehold Rights;
4. Plaintiff failed to pay her loan on the scheduled dates thereof in accordance with the terms of the Promissory Notes;
5. Without foreclosure proceedings, whether judicial or extra-judicial, defendant DBP appropriated the Leasehold Rights of plaintiff Lydia Cuba over the

fishpond in question;

6. After defendant DBP has appropriated the Leasehold Rights of plaintiff Lydia Cuba over the fishpond in question, defendant DBP, in turn, executed a Deed of Conditional Sale of the Leasehold Rights in favor of plaintiff Lydia Cuba over the same fishpond in question;
7. In the negotiation for repurchase, plaintiff Lydia Cuba addressed two letters to the Manager DBP, Dagupan City dated November 6, 1979 and December 20, 1979. DBP thereafter accepted the offer to repurchase in a letter addressed to plaintiff dated February 1, 1982;
8. After the Deed of Conditional Sale was executed in favor of plaintiff Lydia Cuba, a new Fishpond Lease Agreement No. 2083-A dated March 24, 1980 was issued by the Ministry of Agriculture and Food in favor of plaintiff Lydia Cuba only, excluding her husband;
9. Plaintiff Lydia Cuba failed to pay the amortizations stipulated in the Deed of Conditional Sale;
10. After plaintiff Lydia Cuba failed to pay the amortization as stated in Deed of Conditional Sale, she entered with the DBP a temporary arrangement whereby in consideration for the deferment of the Notarial Rescission of Deed of Conditional Sale, plaintiff Lydia Cuba promised to make certain payments as stated in temporary Arrangement dated February 23, 1982;
11. Defendant DBP thereafter sent a Notice of Rescission thru Notarial Act dated March 13, 1984, and which was received by plaintiff Lydia Cuba;
12. After the Notice of Rescission, defendant DBP took possession of the Leasehold Rights of the fishpond in question;
13. That after defendant DBP took possession of the Leasehold Rights over the fishpond in question, DBP advertised in the SUNDAY PUNCH the public bidding dated June 24, 1984, to dispose of the property;
14. That the DBP thereafter executed a Deed of Conditional Sale in favor of defendant Agripina Caperal on August 16, 1984;
15. Thereafter, defendant Caperal was awarded Fishpond Lease Agreement No. 2083-A on December 28, 1984 by the Ministry of Agriculture and Food.

Defendant Caperal admitted only the facts stated in paragraphs 14 and 15 of the pre-trial order. [3]

Trial was thereafter had on other matters.

The principal issue presented was whether the act of DBP in appropriating to itself CUBA's leasehold rights over the fishpond in question without foreclosure proceedings was contrary to Article 2088 of the Civil Code and, therefore, invalid. CUBA insisted on an affirmative resolution. DBP stressed that it merely exercised its contractual right under the Assignments of Leasehold Rights, which was not a

contract of mortgage. Defendant Caperal sided with DBP.

The trial court resolved the issue in favor of CUBA by declaring that DBP's taking possession and ownership of the property without foreclosure was plainly violative of Article 2088 of the Civil Code which provides as follows:

ART. 2088. The creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them. Any stipulation to the contrary is null and void.

It disagreed with DBP's stand that the Assignments of Leasehold Rights were not contracts of mortgage because (1) they were given as security for loans, (2) although the "fishpond land" in question is still a public land, CUBA's leasehold rights and interest thereon are alienable rights which can be the proper subject of a mortgage; and (3) the intention of the contracting parties to treat the Assignment of Leasehold Rights as a mortgage was obvious and unmistakable; hence, upon CUBA's default, DBP's only right was to foreclose the Assignment in accordance with law.

The trial court also declared invalid condition no. 12 of the Assignment of Leasehold Rights for being a clear case of *pactum commissorium* expressly prohibited and declared null and void by Article 2088 of the Civil Code. It then concluded that since DBP never acquired lawful ownership of CUBA's leasehold rights, all acts of ownership and possession by the said bank were void. Accordingly, the Deed of Conditional Sale in favor of CUBA, the notarial rescission of such sale, and the Deed of Conditional Sale in favor of defendant Caperal, as well as the Assignment of Leasehold Rights executed by Caperal in favor of DBP, were also void and ineffective.

As to damages, the trial court found "ample evidence on record" that in 1984 the representatives of DBP ejected CUBA and her caretakers not only from the fishpond area but also from the adjoining big house; and that when CUBA's son and caretaker went there on 15 September 1985, they found the said house unoccupied and destroyed and CUBA's personal belongings, machineries, equipment, tools, and other articles used in fishpond operation which were kept in the house were missing. The missing items were valued at about P550,000. It further found that when CUBA and her men were ejected by DBP for the first time in 1979, CUBA had stocked the fishpond with 250,000 pieces of bangus fish (milkfish), all of which died because the DBP representatives prevented CUBA's men from feeding the fish. At the conservative price of P3.00 per fish, the gross value would have been P690,000, and after deducting 25% of said value as reasonable allowance for the cost of feeds, CUBA suffered a loss of P517,500. It then set the aggregate of the actual damages sustained by CUBA at P1,067,500.

The trial court further found that DBP was guilty of gross bad faith in falsely representing to the Bureau of Fisheries that it had foreclosed its mortgage on CUBA's leasehold rights. Such representation induced the said Bureau to terminate CUBA's leasehold rights and to approve the Deed of Conditional Sale in favor of CUBA. And considering that by reason of her unlawful ejectment by DBP, CUBA "suffered moral shock, degradation, social humiliation, and serious anxieties for which she became sick and had to be hospitalized" the trial court found her entitled to moral and exemplary damages. The trial court also held that CUBA was entitled to P100,000 attorney's fees in view of the considerable expenses she incurred for

lawyers' fees and in view of the finding that she was entitled to exemplary damages.

In its decision of 31 January 1990, [4] the trial court disposed as follows:

WHEREFORE, judgment is hereby rendered in favor of plaintiff:

1. DECLARING null and void and without any legal effect the act of defendant Development Bank of the Philippines in appropriating for its own interest, without any judicial or extra-judicial foreclosure, plaintiff's leasehold rights and interest over the fishpond land in question under her Fishpond Lease Agreement No. 2083 (new);
2. DECLARING the Deed of Conditional Sale dated February 21, 1980 by and between the defendant Development Bank of the Philippines and plaintiff (Exh. E and Exh. 1) and the acts of notarial rescission of the Development Bank of the Philippines relative to said sale (Exhs. 16 and 26) as void and ineffective;
3. DECLARING the Deed of Conditional Sale dated August 16, 1984 by and between the Development Bank of the Philippines and defendant Agripina Caperal (Exh. F and Exh. 21), the Fishpond Lease Agreement No. 2083-A dated December 28, 1984 of defendant Agripina Caperal (Exh. 23) and the Assignment of Leasehold Rights dated February 12, 1985 executed by defendant Agripina Caperal in favor of the defendant Development Bank of the Philippines (Exh. 24) as void ab initio;
4. ORDERING defendant Development Bank of the Philippines and defendant Agripina Caperal, jointly and severally, to restore to plaintiff the latter's leasehold rights and interests and right of possession over the fishpond land in question, without prejudice to the right of defendant Development Bank of the Philippines to foreclose the securities given by plaintiff;
5. ORDERING defendant Development Bank of the Philippines to pay to plaintiff the following amounts:
  - a) The sum of ONE MILLION SIXTY-SEVEN THOUSAND FIVE HUNDRED PESOS (P1,067,500.00), as and for actual damages;
  - b) The sum of ONE HUNDRED THOUSAND (P100,000.00) PESOS as moral damages;
  - c) The sum of FIFTY THOUSAND (P50,000.00) PESOS, as and for exemplary damages;
  - d) And the sum of ONE HUNDRED THOUSAND (P100,000.00) PESOS, as and for attorney's fees;
6. And ORDERING defendant Development Bank of the Philippines to reimburse and pay to defendant Agripina Caperal the sum of ONE MILLION FIVE HUNDRED THIRTY-TWO THOUSAND SIX HUNDRED TEN PESOS AND SEVENTY-FIVE CENTAVOS (P1,532,610.75) representing the amounts paid by defendant Agripina Caperal to defendant Development Bank of the Philippines under their Deed of Conditional Sale.

CUBA and DBP interposed separate appeals from the decision to the Court of Appeals. The former sought an increase in the amount of damages, while the latter questioned the findings of fact and law of the lower court.

In its decision <sup>[5]</sup> of 25 May 1994, the Court of Appeals ruled that (1) the trial court erred in declaring that the deed of assignment was null and void and that defendant Caperal could not validly acquire the leasehold rights from DBP; (2) contrary to the claim of DBP, the assignment was not a cession under Article 1255 of the Civil Code because DBP appeared to be the sole creditor to CUBA - cession presupposes plurality of debts and creditors; (3) the deeds of assignment represented the voluntary act of CUBA in assigning her property rights in payment of her debts, which amounted to a novation of the promissory notes executed by CUBA in favor of DBP; (4) CUBA was estopped from questioning the assignment of the leasehold rights, since she agreed to repurchase the said rights under a deed of conditional sale; and (5) condition no. 12 of the deed of assignment was an express authority from CUBA for DBP to sell whatever right she had over the fishpond. It also ruled that CUBA was not entitled to loss of profits for lack of evidence, but agreed with the trial court as to the actual damages of P1,067,500. It, however, deleted the amount of exemplary damages and reduced the award of moral damages from P100,000 to P50,000 and attorney's fees, from P100,000 to P50,000.

The Court of Appeals thus declared as valid the following: (1) the act of DBP in appropriating Cuba's leasehold rights and interest under Fishpond Lease Agreement No. 2083; (2) the deeds of assignment executed by Cuba in favor of DBP; (3) the deed of conditional sale between CUBA and DBP; and (4) the deed of conditional sale between DBP and Caperal, the Fishpond Lease Agreement in favor of Caperal, and the assignment of leasehold rights executed by Caperal in favor of DBP. It then ordered DBP to turn over possession of the property to Caperal as lawful holder of the leasehold rights and to pay CUBA the following amounts: (a) P1,067,500 as actual damages; P50,000 as moral damages; and P50,000 as attorney's fees.

Since their motions for reconsideration were denied,<sup>[6]</sup> DBP and CUBA filed separate petitions for review.

In its petition (G.R. No. 118342), DBP assails the award of actual and moral damages and attorney's fees in favor of CUBA.

Upon the other hand, in her petition (G.R. No. 118367), CUBA contends that the Court of Appeals erred (1) in not holding that the questioned deed of assignment was a *pactum commissorium* contrary to Article 2088 of the Civil Code; (b) in holding that the deed of assignment effected a novation of the promissory notes; (c) in holding that CUBA was estopped from questioning the validity of the deed of assignment when she agreed to repurchase her leasehold rights under a deed of conditional sale; and (d) in reducing the amounts of moral damages and attorney's fees, in deleting the award of exemplary damages, and in not increasing the amount of damages.

We agree with CUBA that the assignment of leasehold rights was a mortgage contract.

It is undisputed that CUBA obtained from DBP three separate loans totalling