

THIRTEENTH DIVISION

[CA-G.R. CV NO. 73958, August 30, 2006]

**MERCATOR FINANCE CORPORATION, PLAINTIFF-APPELLEE, VS.
GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS),
DEFENDANT-APPELLANT.**

D E C I S I O N

CRUZ, J.:

Before the Regional Trial Court of Pasay City (Branch 117) was an action for specific performance and damages filed by Mercator Finance Corporation (or "appellee") against the Government Service Insurance System (or "appellant") for the surrender of the owner's duplicate of Condominium Certificate of Title (or "CCT") No. 496 in the latter's name covering a condominium unit at Chanelay Towers (formerly Kanlaon Towers), designated as Unit No. 314 (or "Unit 314"), with an area of 78 square meters and located at Roxas Boulevard, Pasay City.

It appears that on May 8, 1984, RELCOM Development Corporation (or "RELCOM") obtained a loan from appellee in the amount of P800,000.00 secured by a real estate mortgage over Unit 314. Because of RELCOM's default, appellee caused the extrajudicial foreclosure of the mortgage on May 26, 1987. Being the successful bidder, appellee was issued a certificate of sale on November 23, 1987.

Subsequently, appellee repeatedly asked appellant for the owner's duplicate of CCT No. 496 in order that the aforesaid mortgage and certificate of sale could be registered. As its demands were ignored, appellee filed the abovementioned action.

In answer, appellant averred that the complaint states no cause of action because it has no privity of contract with appellee; that RELCOM is not the owner of Unit 314 and, therefore, may not mortgage the same; and that, consequently, the mortgage in question and foreclosure thereof are null and void.

In reply, appellee asserted that RELCOM's ownership of Unit 314 and validity of the mortgage and foreclosure proceedings in question were recognized by appellant per (i) its Certification dated December 8, 1997, and (ii) its letter to the president of Chanelay Corporation (or "Chanelay"; a corporation with whom appellant allegedly entered into a joint venture agreement for the renovation of Kanlaon Tower II) dated December 10, 1997 acknowledging the validity of the extrajudicial foreclosure and instructing Chanelay to deliver to appellee the keys to, and to allow the latter to take over, said Unit. Appellee further pointed out that appellant billed RELCOM for telephone and electric bills and association dues for Unit 314; and that its purchase of said Unit gives it a cause of action against appellant.

Issues having been joined, the case was set for pre-trial for several times. However, appellant was declared in default while appellee was allowed to present its evidence

ex-parte for three times due to non-appearance at the scheduled pre-trial pursuant to the orders dated October 7, 2000, February 12, 2001 and August 6, 2001.

The first two orders were set aside upon motion of appellant (orders dated October 31, 2000 and March 5, 2001). However, the lower court denied appellant's motion to set aside the third order per order dated August 16, 2001. In that motion, appellant's lawyer, Atty. Mario I. Molina, alleged that he belatedly arrived in court for the pre-trial of August 6, 2001 on account of a vehicular accident in Balic-Balic, Manila. The reason for the denial of the motion was explained in the order dated August 16, 2001, which pertinently reads:

"Considering the track record of Atty. Molino (sic) as shown above, the Court takes his excuse for being absent during the August 6, 2001 pre-trial with a grain of salt. This Court has enough of Atty. Molino's (sic) inefficiency, and defendant must suffer for the inadequacy of its counsel."

Appellant filed a motion for reconsideration of the order dated August 16, 2001 but it met the same fate in an order dated September 19, 2001.

On the basis of the evidence adduced by appellee, the trial court rendered a decision dated November 19, 2001, the decretal portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered in favor of the (appellee) and against the (appellant) and ordering the latter to –

- a) deliver to the (appellee) the Condominium Certificate of Title No. 496;
- b) pay the (appellee) the amount of Two Hundred Thousand (P200,000.00) Pesos as exemplary damages;
- c) pay the (appellee) the amount of Fifty Thousand (P50,000.00) Pesos as and for attorney's fees; and
- d) pay the cost of suit.

SO ORDERED."

Appellant filed a motion for reconsideration but it was denied pursuant to the order dated March 4, 2002.

Appealing the decision, appellant imputes errors to the trial court -

1. "IN NOT DECLARING THAT THE MORTGAGE CONTRACT RELIED UPON BY (APPELLEE) AS THE ROOT OF ITS TITLE OVER THE MORTGAGED CONDOMINIUM UNIT IS NULL AND VOID BECAUSE THE MORTGAGOR IS NOT THE OWNER THEREOF";
2. "IN NOT DISMISSING THE INSTANT SUIT ON THE GROUND THAT THE COMPLAINT FAILS TO STATE A CAUSE OF ACTION INASMUCH AS ON THE VERY FACE OF THE COMPLAINT THERE IS NO PRIVITY OF CONTRACT BETWEEN (APPELLEE) AND (APPELLANT)";