

## **SIXTH DIVISION**

**[ CA-G.R. CV NO. 84251, September 19, 2006 ]**

**MANUEL U. TINIO, PLAINTIFF-APPELLEE, VS. SPS. WILMA P. MUÑOZ AND GODOFREDO PINEDA, DEFENDANTS-APPELLANTS.**

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

**COSICO, J.:**

This is an appeal from the Decision<sup>1</sup> dated January 7, 2004 of the Regional Trial Court [RTC], Branch 89 of Baloc, Sto. Domingo, Nueva Ecija in the case entitled, "Manuel Tinio v. Spouses Wilma P. Muñoz and Godofredo Pineda" docketed as Civil Case No. 72-SD(2001) AF and denominated as an action for specific performance and collection of sum of money with damages.

Verily, in ruling in favor of herein plaintiff-appellee Manuel Tinio, the trial court, in the decretal portion of the assailed decision held:

"In the light of the foregoing therefore, a decision is hereby rendered:

1. Directing the defendants to completely execute the Real Estate Mortgage over the several parcels of land covered under TCT Nos. N-9798, 9799, 9801, 9805 and 9806 by affixing the signature of Godofredo Pineda therein;
2. Ordering the defendants to cause the annotation/registration of the said Real Estate Mortgage with the Office of the Register of Deeds, Talavera, Nueva Ecija at the back portion of the aforesaid titles;
3. Ordering the Register of Deeds, Talavera, Nueva Ecija to do the annotation/recording should the defendant's fail/refuse to sign the subject document (Real Estate Mortgage);
4. Declaring the defendants to be liable to herein plaintiff for their loan obligation in the total amount of P223,791.97 and applying their agreed interest rate of 3% per month starting April 30, 2000 until fully paid over the P100,000.00 loan obtained by the defendant Wilma Pineda from plaintiff Manuel U. Tinio;
5. Attorney's fees and litigation expenses in the amount of P50,000.00 are likewise awarded in favor of the plaintiff.

SO ORDERED." [Decision, pp. 5-6]

### **The Facts**

As narrated by the trial court, the antecedent facts of the instant case are as

follows:

"Defendants are spouses Wilma P. Muñoz and Godofredo Pineda. Alleged among others in the Complaint are the following: that plaintiff is of legal age, single, and a resident of Bayanihan, Gapan, Nueva Ecija; that defendants are likewise both of legal age, and residents of Hulo, Sto. Domingo, Nueva Ecija; that on December 31, 1999, plaintiff and defendants had entered into a Contract of Loan whereby the former had agreed to grant the latter the loan in the amount of P100,000.00; that as a security thereof, defendants executed a Deed of Real Estate Mortgage over certain parcels of land under the following titles: TCT No. N-9798; 9799; 9801; 9805; 9806, all located at Brgy. Malasin, Sto. Domingo, Nueva Ecija and containing the following areas; 1,302 square meters; 1,327 square meters; 1,383 square meters, 1,482 square meters, 5,185 square meters respectively; that these titles are owned by Wilma Pineda exclusively; that defendants had promised to herein plaintiff that they will cause the notarization and registration of the said "deed" to the office of the Register of Deeds, Nueva Ecija; however, defendants failed to comply with what they promised to do, despite several demands made to them by the plaintiff, that defendants likewise, failed to pay the loan obligation where the same fell due; that the second owner's copies of the titles mentioned and described above are presently in the possession of the plaintiff as these were delivered to him voluntarily and personally by the defendants; that, unfortunately, plaintiff cannot proceed with the foreclosure of the Real Estate Mortgage because of its incomplete execution which is attributable to the non-action or refusal to do what remains for the defendants to accomplish; that moreover, defendants are also indebted to herein plaintiff in the total amount of P123,721.97 representing the amounts of Land Bank checks they issued in favor of Manuel U. Tinio which were all unpaid in view of the closure of the account.

Plaintiff Tinio also alleges, actual, moral and exemplary damages, litigation expenses and attorney's fees are likewise included in the complaint.

Records will show that only defendant Wilma Pineda filed her answer to the complaint thru Atty. Bayani P. Dalangin. Co-defendant Godofredo Pineda was declared in default by this Court, upon motion of Atty. Matias.

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Upon request of the answering defendant, this Court gave the defendants ample time to have their obligation to herein plaintiff settled out of Court, and this was consented to by the plaintiff, however, nothing happened then.

A reconsideration of the Order allowing the plaintiff to present evidence ex-parte was granted by the Court, thus, initially, Atty. Dalangin was allowed to participate in the plaintiff's presentation of evidence, but at the end, in view of his non-appearance during the following date of hearing on July 30, 2003, Atty. Matias proceeded with the hearing ex-

parte.

Plaintiff Manuel U. Tinio was called to the stand; under oath, he testified that he is 32 years old, single, a businessman, and a resident of Bayanihan, Gapan, Nueva Ecija; that particularly, he is engaged in Gapan City Ice Plant and storage and also, in money lending; that he knows defendants spouses Pineda since defendant Wilma Pineda stored onions sometime in April 1999 in his storage and that he lent her money in the sum of more than P200,000.00 as pleaded by the former; that the loans he extended to her were evidenced by the checks Wilma Pineda issued to him, and also, a Mortgage Contract; that the Real Estate Mortgage was signed only by Wilma Pineda; that her husband could not sign it because of their family problem related to a shooting incident involving their farm and her husband was one among those involved in the said incident; that because of this, Wilma Pineda asked for an extended time to have the Real Estate Mortgage signed by her husband.

x x x witness Tinio testified that he presented for payment the checks issued to him by Pineda when they became due, however, these were dishonored because the account was closed; that therefore, the checks were stamped "closed account" and the MetroBank issued him a debit memorandum; that he made oral and written demands to Pineda for the payment of her obligations after the checks were dishonored; that the letter of demand was prepared by his lawyer and had it mailed on June 15, 2000; that he knew that Pineda received his demand letter since the latter wrote back to his counsel, Atty. Matias asking that she be allowed to see him on June 20, 2000; that this request was accommodated by his counsel but again, Wilma Pineda failed to settle her obligations; that the total loan obligation of Pineda is P223,721.97, however, only the amount of P100,000.00 was secured by a Real Estate Mortgage mentioned earlier; that an interest of 3% per month was agreed upon by the parties; that as stated above, the execution of Real Estate Mortgage is considered as incomplete since her husband did not sign the contract; that consequently, plaintiff filed an Adverse claim to protect his interest thereto; that he had the adverse claim annotated at the back portions of the titles subject matter of this present case.

The second witness called to the stand was Sylvia R. Santiago; after she was sworn in, she testified that she is 26 years old, single, an employee of Manuel U. Tinio, and a resident of San Nicolas, Gapan City; that her employment to Mr. Tinio started in 1998; that her duties consists of keeping the records of accounts of their customers; that she came to know of Wilma Pineda as the latter used to deposit onions in the cold storage of Mr. Tinio; that Pineda also borrowed money from plaintiff Tinio in the total amount of more than P223,721.97; that the amount of P100,000.00 is secured by a Real Estate Mortgage covering the parcels of land under the titles mentioned and subject matter of this case; that the remaining amount of loan were covered by the checks issued by Wilma Pineda to herein plaintiff; that she witnessed the handling over of the checks to Tinio and their signing by Pineda; that these were signed and delivered in December 1999 at San Leonardo, Nueva Ecija where Tinio is likewise holding office thereat; that the Real Estate Mortgage was seen

by her also executed by Pineda on December 31, 1999 and gave to Tinio at San Leonardo, Nueva Ecija; that as per her records, Pineda failed to pay her obligation when they all fell due and demandable; that she was the one who presented for payment the checks with Metrobank but all checks were dishonored and had them stamped account closed; that Metrobank issued them Debit Memo.” [Decision, pp.1-4]

To prove his claims, plaintiff-appellee, presented among other things, the following documents as evidence: (1) Real Estate Mortgage dated December 31, 1999; (2) Original Copies of TCT Nos. N-9798; N-9799; N-9801; N-9805; N-9806; (3) Three Land Bank Checks (Nos. 0017623; 0017624; 0017625) all dated April 30, 2000 issued in the name of Manuel Uy Tinio by Wilma P. Muñoz bearing the following amounts, P99,751.97, P100,000.00 and P23,970.23, respectively; (4) Demand Letter dated June 1, 2000; and (5) Letter of Wilma Muñoz addressed to Atty. Matias.

### **The Ruling of the Regional Trial Court**

As earlier adverted to, the trial court ruled in favor of plaintiff-appellee in this wise -

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“After having carefully studied the records of this case, particularly the documentary evidence and the oral testimonies of the witnesses, this Court is convinced that the plaintiff herein has a valid and meritorious cause of action to pursue with against defendants spouses Godofredo Pineda and Wilma Pineda” [Decision, p. 5]

### **The Present Appeal**

In their Brief, defendants-appellants ascribe the following errors committed by the trial court to wit:

1. In not finding that the purported Deed of Real Estate Mortgage is unenforceable and not binding upon the defendants-appellants.
2. In declaring the defendants-appellants liable to pay 3% monthly interest rate over the P100,000.00 loan contracted by defendant-appellant Wilma Muñoz.
3. In ordering the defendants-appellants to pay the plaintiff-appellee P50,000.00 as attorney’s fees and litigation expenses.

Defendants-appellants argue<sup>2</sup> that the trial court erred in failing to appreciate that the real intention of the parties in the execution of the Deed of Real Estate Mortgage was not to enter into an ancillary contract of mortgage but rather to use the defendants-appellants’ properties as a mere guarantee of their P100,000 loan obligation with plaintiff-appellee. Notwithstanding, even if it is true that the agreement between the contending parties is one of mortgage, the same is invalid and unenforceable considering the lack of written consent by Godofredo Pineda which is necessary to validly encumber the said properties which are part and parcel of the spouses’ conjugal properties.

Moreover, the terms and conditions set forth under the mortgage contract, specifically on the monthly interest rate of 3% is contrary to law, public morals, and public policy considering that the same is unconscionable. Likewise, the filing of the

instant case is premature considering that the loan obligations of defendants-appellants have not yet become due and demandable as no date for the maturity of the said loans had been previously agreed upon by the parties.

Similarly, it was also an error for the trial court to award litigation costs and attorney's fees as the same were not warranted under the circumstances by reason of the fact that defendants-appellants were justified in opposing plaintiff-appellee's unjustified and premature demands.

On the other hand, the plaintiff-appellee posits<sup>3</sup> that the conduct of the spouses belies their stance herein. First, if the property was not intended as security for the loan obligations, why then did the spouses deliver the titles of their property to plaintiff-appellee? It must also be stressed that the mortgaged properties herein are not part of the conjugal properties of the spouses, there being no proof to show otherwise. Plaintiff-appellee asserts that the term, "married to Godofredo Pineda" is merely descriptive of the civil status of Wilma Muñoz and does not make the mortgaged properties conjugal properties. Nonetheless, the conjugal partnership is liable to answer for the loan obligations contracted by the spouses as it is presumed that the loan was used for the benefit of the family.

Meanwhile, the 3% monthly interest is not unconscionable because the contracting parties freely agreed upon the said interest rate. Anent the loan obligations being due and demandable, plaintiff-appellee advances that the issuance of the checks in payment of the said loan obligations represents the fact that the same had already matured. On this note, a letter of demand was sent to defendants-appellants but they failed to pay the amount on the said checks. Finally, the award of attorney's fees and litigation expenses are justified under the circumstances.

### **This Court's Ruling**

We affirm the findings of the trial court albeit with certain modifications.

### **First Issue: Secured Loan in the Amount of P100,000**

#### **The P100,000 Loan Obligation was Secured by way of Real Estate Mortgage**

As borne out by the records, as against defendants-appellants' stand that their real properties were used only as a guaranty for the P100,000 loan, the plaintiff-appellee was able to present testimonial and documentary evidence to prove that the agreement entered into by the contending parties herein respecting the real properties subject of the instant case is one of mortgage. On this note, it bears stressing that mere allegations on the part of a party as to a certain fact unsupported by evidence deserves scant consideration.<sup>4</sup> And in civil cases, a party proves his claim by presenting a preponderance of evidence to support the same, or evidence that is of superior weight than the evidence presented by the other party. Verily, under the present facts of the case, we find that the evidence presented by plaintiff-appellee to prove his claim is of superior weight than the mere allegations on the part of the defendants-appellants regarding the nature of the said contract.

In this regard, to prove that the agreement between the contending parties is really