

SIXTH DIVISION

[CA-G.R. CV NO. 96201, February 25, 2015]

**SPOUSES MARCELINO V. ROSARIO AND ELEUTERIA T. ROSARIO,
PLAINTIFFS-APPELLANTS, VS. OFELIA H. MOREDO, EQUITABLE
SAVINGS BANK AND THE REGISTER OF DEEDS OF MAKATI CITY.
DEFENDANTS-APPELLEES.**

D E C I S I O N

PERALTA, JR., E. B., J.:

Before Us is an Appeal^[1] filed by appellants-spouses Marcelino and Eleuteria Rosario which impugned the July 7, 2010 Decision of the Regional Trial Court (RTC), Branch 148 of Makati City in Civil Case No. 07-123, the dispositive portion of which reads:
^[2]

"WHEREFORE, premises considered,

- 1. The Deed of Sale dated September 18, 2006 be declared null and void for being simulated and thus have no legal force and effect but only as between the plaintiffs and defendant Moredo;*
- 2. Since it was shown that defendant Moredo defrauded herein plaintiffs and where (sic) able to run off with the proceeds of the loan, said defendant is hereby ordered to reconvey the subject property by paying her obligation with defendant bank in order to redeem the same or in case of failure to do so, to pay the plaintiffs actual damages in the amount of P975,000.00 based on the assessed value of the plaintiff's property and P100,000.00 as moral damages and attorneys (sic) fees in the sum of P50,000.00 plus P2,500 per appearance of counsel*
- 3. With respect however to defendant bank, the simulated sale would not affect its right under the Mortgage, thus the mortgage contract between defendant bank and defendant Moredo stands as binding and valid and the bank will have the right to foreclose the property if defendant Moredo will not be able to pay her loan obligation.*

The complaint against herein defendant Bank by the plaintiffs is hereby DISMISSED for lack of merit.

- 4. As to the counterclaim filed by defendant against plaintiffs, since the latter was not an actual party to the loan obligation and mortgage contract executed by defendant Moredo with defendant Bank, the Court is of the view that the counterclaim be dismissed considering that the Court already acknowledged the lien of herein defendant bank with the subject property and the possible losses*

(sic) of the plaintiffs of their property as a result of the mortgage is already enough penalty for their fault of entering into a simulated contract with defendant Moredo.

5. As to the cross claim (sic) filed by defendant bank against defendant Moredo the same is hereby granted, thus defendant Moredo is obligated to pay the loan it borrowed from defendant bank with the interest of 12% per annum till the payment of the whole obligation; also to pay the amount of P300,000.00 for litigation expenses incurred by defendant bank in the instant case and Two Hundred Thousand Pesos (P200,000.00) as exemplary damages in order to serve as an example for others to refrain from doing similar acts as what defendant Moredo did in the future;

5. Defendant Register of Deeds who approved the transfer of the Title on the other hand for its neglect to exercise due diligence required of it in the performance of its Official functions, is hereby reprimanded for such neglect without prejudice for the filing of an administrative case against the Register of Deeds in the proper forum by the plaintiffs if the latter deem appropriate;

6. Defendant Moredo to pay herein plaintiffs the costs of litigation.

SO ORDERED"

THE FACTS:

Defendant-appellee Ofelia H. Moredo (Moredo) was the boarder of Spouses Marcelino and Eleuteria Rosarios' (Spouses Rosario).^[3] Apparently, Moredo convinced Eleuteria to invest in a purported socialized program of a Governor of Laguna to help with Spouses Rosario's finances.^[4] Since the Spouses Rosario had no money for capital, Moredo suggested to obtain a loan from the bank, with Rosario's property as collateral to be transferred to Moredo.^[5]

It appeared, too, that Spouses Rosario entered into a simulated Deed of Sale on their property with Moredo on September 18, 2006. It was made to appear on the Deed of Sale that the spouses sold the property to Moredo in the amount of Two Hundred Thousand Pesos (P200,000.00).^[6]

The spouses later ascertained that their property was mortgaged with defendant-appellee Equitable Savings Bank, their title was cancelled and a new transfer certificate of title was issued in the name of Moredo after the simulated Deed of Sale was registered and the title was used as security for Moredo's loan with defendant-bank.^[7]

As such, the corresponding suit was filed by the spouses against Moredo, the bank, and the Register of Deeds.^[8]

Defendant Equitable Savings Bank filed its Answer with Counter and Cross Claims on April 10, 2007. As Special and Affirmative Defenses, Equitable Savings Bank alleged that: (1) it is a mortgagee in good faith as it did not merely rely on the mortgagor's

title; (2) not all simulated contracts are void. "Relatively Simulated" contracts are valid, and do not affect the rights of parties who relied on good faith; (4) plaintiff spouses have no cause of action against Equitable Savings Bank for damages in the absence of contractual relations; and (5) as between two innocent parties, the loss falls upon him who empowered a third party to perpetuate a wrong.^[9] By way of Counterclaim, defendant Bank prayed that plaintiffs be ordered to pay the amount of Three Hundred Thousand Pesos (P300,000.00) as attorney's fees and Two Hundred Thousand Pesos (P200,00.00) as exemplary damages.^[10] Under its Cross Claim, Equitable Savings Bank prayed that in the event that the Real Estate Mortgage is impaired or eventually annulled, by holding co-defendant Moredo liable for:^[11]

(a) The entire outstanding loan balance as may be proven under the Loan Agreement with Equitable Savings Bank, and

(b) The amount of damages it (Equitable Savings Bank) may be held liable in favor of plaintiff spouses, and other forms of consequential damages including costs of litigation.

Co-defendant Moredo's Answer averred that she bought the property subject of the litigation in the amount of P900,00.00; she gave the full amount to the plaintiffs when they surrendered the title to her; they executed the deed of sale in their belief that if they put a lesser amount in it the corresponding tax consequences would be minimal; the transfer of the certificate of title in her name was with the full knowledge of the plaintiffs; plaintiffs were present when she mortgaged the subject property with defendant bank and when the bank conducted its background investigation.^[12]

Following conclusion of pre-trial conference,^[13] trial on the merits ensued.

Evidence for the spouses unfolded through Marcelino Rosario (Rosario), one of the plaintiffs; Leizel Dino (Dino), an employee of defendant bank; and Roy Garcia (Garcia), an appraiser for defendant bank, as testimonial sponsors.

Mr. Rosario presented and identified the Deed of Sale,^[14] the Tax Declaration of the taxes paid by Ms. Moredo with the Bureau of Internal Revenue (BIR) and the Capital Gains Tax she paid for the transfer of the property.^[15] He also presented a Certification/Barangay Clearance Certificate that he is a bonafide resident of Lot 2, Block 251 Target Range Blvd., Zone 13, Pembo St., Makati City and a Certification signed by several individuals attesting to his residence and ownership of the property.^[16]

He testified, among other matters, that the fair market value of their property based on the BIR zonal valuation is more or less nine hundred seventy five thousand while the selling price in the subject Deed of Sale was only two hundred thousand pesos.^[17]

Ms. Dino presented the Title Verification Report, Appraisal Report and Title (TCT No. 22975) of the subject property.^[18] The Title Verification Report showed that TCT No. 22975 was in the name of defendant Moredo and that the actual land area of the

property is One Hundred Thirty square meters.^[19] The Appraisal Report pegged the value of the property with the improvements thereon at P3,737,400.00.^[20] It also declared that the property was solely occupied by defendant Moredo.^[21] The Title of the property showed that it was transferred in the name of defendant Moredo on October 26, 2006.^[22] On cross, she identified defendant Moredo as one of the persons in the attached pictures on the appraisal report.^[23]

Anent Mr. Garcia, he fortified Ms. Dino's statements insofar as the Appraisal Report, which he, as former Appraiser of Equitable PCIBank, prepared and submitted to the bank.^[24] On cross, he testified that he did not see the spouses Rosario during the inspection of the subject property on November 9, 2006^[25] and that the title of the subject property when presented to the Bank was in the name of defendant Moredo.^[26]

Defendant bank introduced three witnesses namely: Liezel Dino, Raymund Basilio and Edcel Ditona.

Ms. Dino testified that: she is an Account Officer of Equitable Savings Bank; she was assigned to solicit and process loan applications;^[27] she met defendant Moredo in the first week of November 2006 when the latter applied for a loan in the amount of 2.5 million pesos;^[28] Ms. Moredo submitted pre-approval requirements consisting of information on her personal data, income and the collateral;^[29] the bank, through its investigator, Mr. Ramon Basilio, conducted the credit investigation for the residence and business of defendant Moredo;^[30] the bank also conducted title verification and appraisal of the property being mortgaged as collateral; Mr. Roy Garcia, the bank's appraiser, appraised the property;^[31] after the credit investigation and appraisal, she endorsed the account to Mr. George Madera, a credit evaluator and one of the account officers of the bank; the loan application of defendant Moredo was then approved in the amount of 2.2 million pesos.^[32]

Ms. Dino also identified pieces of documents concerning what transpired between the principal parties,^[33] particularly the loan agreement, promissory notes and the real estate mortgage signed by defendant Moredo.^[34]

Mr. Basilio's and Ms. Ditona's role revolved on ocular inspection of the subject property and additional credit investigation.^[35]

For her part, defendant Ofelia H. Moredo and her counsel failed to appear and present evidence despite notice. Thus, co-defendant Moredo was deemed to have waived the right to present her evidence.^[36]

Subsequently, the trial court rendered its assailed July 7, 2010 Decision.^[37] Hence, the instant appeal was elevated to Us based on the following ascriptions:^[38]

A) ...IN HOLDING THAT THE PLAINTIFFS- ARE ALSO AT FAULT FOR AGREEING OR VOLUNTARILY ENTERING INTO A SIMULATED SALE TO DEFRAUD THIRD PERSONS;

B) ...IN HOLDING THAT THE DEFENDANT BANK EXERCISED THE DUE DILIGENCE REQUIRED OF IT AND IS A MORTGAGEE IN GOOD FAITH;

C) ...IN HOLDING THAT WHILE INDEED THE SUBJECT DEED OF SALE IS INDEED SIMULATED AND SHOULD BE ANNULLED SUCH WOULD NOT BE THE CASE IN SO FAR AS THIRD PARTIES IS CONCERNED LIKE THE DEFENDANT BANK;

D) ...IN HOLDING THAT EVEN IF THE TRANSFER OF THE TITLE TO THE NAME OF DEFENDANT MOREDO IS FRAUDULENT, THE SAME WILL NOT AFFECT THE RIGHT OF A MORTGAGEE IN GOOD FAITH.

THIS COURT'S RULING

The issues raised in the instant Appeal can be condensed into two matters: (1) the genuineness of the subject Deed of Sale and; (2) the determination of whether or not defendant bank was a mortgagee in good faith.

Was the subject Deed of Sale genuine or simulated?

There were several circumstances in the instant case which indicated a simulated Deed of Sale. As observed by the trial court, and to which We concur since it was sufficiently supported by the evidence on record:^[39]

First, the consideration or price for the sale^[40] was simulated and largely inadequate or small compared to the assessed value of the property which amounts to Nine Hundred Seventy Five Thousand pesos based on the valuation made by the bank.^[41] Although inadequacy of price does not invalidate a contract or affect the validity of the contract, the fact that it was a simulated sale and there was no proof of the intention to pay the stipulated price in the subject Deed of Sale is tantamount to a contract that lacks valid consideration. **Second**, it is interesting to note that what was written in the lower portion of the sale was a jurat instead of an acknowledgment which is what is required by law in a deed of sale.^[42] A simple look of the aforesaid deed of sale would give us the presumption that it was merely simulated aside from the fact that the same was admitted by the plaintiffs themselves.

Moreover, no proof was submitted by defendant Moredo as to the payment she allegedly made on the subject property in the amount of nine hundred thousand pesos. The court cannot just rely on her bare allegations without any cogent proof or evidence submitted to support the same.

In the case of *Spouses Buenaventura et al., vs. Court of Appeals et al.*, G.R. No. 126376, November 20, 2003, the Supreme Court held that:

If there is no meeting of minds of the parties as to the price, because the price stipulated in the contract is simulated, then the contract is void. Article 1471 of the Civil Code states that if the price in a contract of sale is simulated, the sale is void.