

ELEVENTH DIVISION

[CA-G.R. CV NO. 95985, May 22, 2014]

MERLYN O. IGNACIO IKEDA, PLAINTIFF-APPELLEE, VS. BRENDA CALAPATIA AND BRIAN KEITH L. CALAPATIA,^[1] DEFENDANTS-APPELLANTS.

D E C I S I O N

ANTONIO-VALENZUELA, J.:

This is the appeal filed by Brenda L. Calapatia and Brian Keith L. Calapatia ("defendants-appellants Brenda and Brian") who substituted for the deceased defendant Rogelio G. Calapatia ("defendant Rogelio") in Civil Case No. Q-96-29103, entitled "*Merlyn O. Ignacio-Ikeda v. Natalie C. Limpe, Cristina C. Arriola, Rogelio Calapatia, Corazon Cortez, Felizarda Durana, Myrna Santiago, Lolita Alfonso, Antonio Vasquez, Viterbo Cahilig, Julio Santelices, and the Register of Deeds of Quezon City.*" Defendants-appellants Brenda and Brian assail the Decision dated 20 September 2010^[2] ("assailed Decision") issued by the Regional Trial Court, Branch 221, Quezon City ("RTC").

The facts are as follows: on 10 September 1996, Merlyn O. Ignacio Ikeda ("plaintiff-appellee Ikeda") entered into the Deed of Conditional Sale^[3] with the registered owner, Natalie C. Limpe ("defendant Limpe"), over the 585 square meter parcel of land in Tierra Pura Homes, Tandang Sora, Quezon City, covered by Transfer Certificate of Title ("TCT") No. 265519^[4] ("subject property"). Plaintiff-appellee Ikeda initially paid Cristina C. Arriola ("defendant Arriola," defendant Limpe's attorney-in-fact) Php 100,000.00, with the condition that defendant Limpe herself would sign the Deed of Absolute Sale.^[5] On 14 September 1996, defendant Limpe signed the Deed of Absolute Sale in the presence of plaintiff-appellee Ikeda. Then, on 19 September 1996, plaintiff-appellee Ikeda paid defendant Arriola Php 1,356,156.25. Plaintiff-appellee Ikeda also paid defendant Rogelio (who later on passed away, and was substituted by defendants-appellants Brenda and Brian) Php 2,000,000.00 for the cancellation of the prior mortgage (because there was a prior mortgage between the defendant Rogelio [as mortgagee] and defendant Limpe [as mortgagor] over the subject property). After receipt of the payment, defendant Rogelio executed the Cancellation of Real Estate Mortgage.^[6]

Plaintiff-appellee Ikeda went to the Office of the Register of Deeds, Quezon City to register the Cancellation of Real Estate Mortgage. However, the Registrar denied the registration, and informed plaintiff-appellee Ikeda that the owner's duplicate copy of the TCT No. 265519 from defendant Rogelio, which plaintiff-appellee Ikeda presented, was fake.

Aggrieved, plaintiff-appellee Ikeda filed the Complaint for Damages with Prayer for a Writ of Preliminary Attachment^[7] before the RTC, against defendant Limpe, defendant Arriola, defendant Rogelio, Corazon Cortez ("defendant Cortez"), Felizarda

Durana ("defendant Durana"), Myrna Santiago ("defendant Santiago"), Lolita Alfonso ("defendant Alfonso"), Antonio Vasquez ("defendant Vasquez"), Viterbo Cahilig ("defendant Cahilig"), and Julio Santelices ("defendant Santelices").

The Complaint before the RTC alleged: defendant Rogelio knew that the owner's duplicate copy of TCT No. 265519 was fake; despite knowledge of the defect in his title, defendant Rogelio did not inform plaintiff-appellee Ikeda that the owner's duplicate copy of TCT No. 265519, he (defendant Rogelio) negotiated and turned over to plaintiff-appellee Ikeda had a defect; the employees of the Office of the Register of Deeds conspired with defendant Rogelio, defendant Limpe, and defendant Arriola, in annotating the mortgage on the fake owner's duplicate copy of TCT No. 265519.

The Complaint prayed for: a writ of preliminary attachment; Php 3,685,500.00, as actual damages; moral damages, exemplary damages, and attorney's fees.

The RTC conducted *ex-parte* hearing on plaintiff-appellee Ikeda's application for the issuance of a writ of preliminary attachment.^[8] Plaintiff-appellee Ikeda testified: defendant Rogelio is guilty of fraud in negotiating with plaintiff-appellee Ikeda over the subject property; defendant Rogelio failed to inform plaintiff-appellee Ikeda that the owner's duplicate copy of TCT No. 265519 in defendant Rogelio's possession was spurious.^[9]

The RTC granted the prayer for the issuance of the writ of preliminary attachment,^[10] and upon plaintiff-appellee Ikeda's posting of the bond, the RTC issued the corresponding writ on 13 January 1997.^[11] The RTC levied upon the owner type Jeep Wrangler registered in the name of defendant Rogelio.^[12]

Defendant Rogelio filed Answer^[13] and alleged: defendant Rogelio was not privy to the sale of the subject property between plaintiff-appellee Ikeda and defendant Limpe, and defendant Rogelio's participation was limited to the cancellation of the mortgage; in May 1995, defendant Rogelio previously verified the authenticity of the owner's duplicate copy of TCT No. 265519 and gathered no adverse information from the Office of the Register of Deeds; after verifying that the owner's duplicate copy of TCT No. 265519 was genuine, defendant Rogelio gave defendant Limpe Php 1,000,000.00, as a loan, and secured the loan by the mortgage over the subject property and the Office of the Register of Deeds annotated the mortgage at the back of TCT No. 265519; plaintiff-appellee Ikeda's payment of Php 2,000,000.00 to defendant Rogelio was done regularly because the amount represented the redemption price of the subject property; after the redemption took effect, defendant Rogelio executed the Cancellation of Mortgage and turned over the owner's duplicate copy of TCT No. 265519 of the subject property to plaintiff-appellee Ikeda.

Defendant Rogelio raised several affirmative defenses in his Answer, thus: on 24 May 1995, defendant Limpe obtained a loan from defendant Rogelio and his spouse for Php 1,000,000.00, with interest of 5% per month, for which the parties executed the Real Estate Mortgage over the subject property;^[14] on 19 October 1995, defendant Rogelio registered the mortgage with the Office of the Register of Deeds, and the Registrar annotated the mortgage at the back of TCT No. 265519; on 28 March 1996, defendant Rogelio extrajudicially foreclosed the mortgage, and complied with the publication requirement; on 27 May 1996, the auction sale was

conducted and the subject property was sold to defendant Rogelio, however, the sale was not immediately registered because the Office of the Register of Deeds had to clarify matters with the owner, defendant Limpe; defendant Rogelio got back the owner's duplicate copy of TCT No. 265519 and the certificate of sale from the Office of the Register of Deeds even without the sale having been registered, because defendant Arriola assured defendant Rogelio that the subject property would be redeemed; true to the promise, defendant Arriola redeemed the subject property on 19 September 1996 by the payment of Php 2,000,000.00 from the proceeds of the sale of the subject property to plaintiff-appellee Ikeda; plaintiff-appellee Ikeda's cause of action is against defendants Limpe and Arriola for the violation of the warranties of sale, and not against defendant Rogelio who had a distinct and regular mortgage transaction with defendants Limpe and Arriola.

Defendant Rogelio filed Application for Damages,^[15] on account of the execution of the Writ of Preliminary Attachment against him. Plaintiff-appellee Ikeda filed Opposition/Comment to Discharge of Attachment and Application for Damage.^[16]

The RTC conducted hearings on defendant Rogelio's affirmative defenses. Defendant Rogelio^[17] and defendant Cortez^[18] testified. The evidence for defendant Rogelio is summarized thus: defendant Rogelio was a mortgagee in good faith, because there was a valid mortgage contract entered into between defendant Rogelio and defendant Limpe; defendant Rogelio granted defendant Limpe Php 1,000,000.00 loan, with the agreement that it will be fully paid within 2 months, and as guarantee, defendant Limpe issued the postdated check for Php 1,000,000.00, however, upon presentment, the check was dishonored due to account closed; after defendant Limpe failed to pay the loan, defendant Rogelio registered the Real Estate Mortgage with the Office of the Register of Deeds, and had the mortgage annotated on TCT No. 265519; when defendant Rogelio registered the mortgage, the Office of the Register of Deeds issued the certified true copy of TCT No. 265519, and verified that the owner's duplicate copy of TCT No. 265519 was genuine; defendant Rogelio extrajudicially foreclosed the property after complying with the legal requirements; on 27 May 1996, the auction sale was conducted, and defendant Rogelio was the highest bidder; defendant Rogelio registered the certificate of sale in the Office of the Register of Deeds, and delivered the pertinent documents to effect the registration; the certificate of sale was not registered, and defendant Rogelio withdrew the owner's duplicate copy of TCT No. 265519 and the certificate of sale on 8 August 1996; defendant Arriola called and advised defendant Rogelio not to register the sale because defendants Arriola and Limpe would redeem the subject property; on 19 September 2006, defendants Arriola and Limpe redeemed the subject property from defendant Rogelio by the payment of Php 2,000,000.00 from the proceeds of the sale of the subject property to plaintiff-appellee Ikeda; after the payment, defendant Rogelio executed the Cancellation of Real Estate Mortgage.

Defendant Rogelio and defendant Cortez filed the Joint Formal Offer of Evidence,^[19] in support of their affirmative defenses. Plaintiff-appellee Ikeda filed Comment and/or Objection (To Defendants' Offer of Evidence).^[20]

The following persons testified for plaintiff-appellee Ikeda regarding defendant Rogelio's affirmative defenses: defendant Santelices,^[21] Rosario Bautista Cunanan.^[22] The evidence for plaintiff-appellee Ikeda is summarized thus: defendant Rogelio was in bad faith in receiving the Php 2,000,000.00 from plaintiff-appellee Ikeda, because defendant Rogelio had prior knowledge of the defect in the owner's

duplicate copy of TCT No. 265519; when defendant Rogelio tried to register the certificate of sale, defendant Santelices informed defendant Rogelio that there were discrepancies between the owner's duplicate copy of TCT No. 265519 presented by defendant Rogelio, and the original copy of TCT No. 265519 on file with the Office of the Register of Deeds, however, despite such knowledge, defendant Rogelio failed to inform plaintiff-appellee Ikeda that the owner's duplicate copy of TCT No. 265519 was fake.

Plaintiff-appellee Ikeda filed Formal Offer of Evidence by Plaintiff,^[23] while defendant Rogelio filed Comment-Opposition (To Plaintiff's Formal Offer of Evidence).^[24]

Defendant Rogelio and plaintiff-appellee Ikeda filed separate Memorandum.^[25]

With the submission of the parties' memoranda, defendant Rogelio's affirmative defenses were submitted for resolution.

On 15 January 2002, the RTC denied defendant Rogelio's affirmative defenses, and Motion for Damages,^[26] and then scheduled the case for pre-trial.

Plaintiff-appellee Ikeda filed Pre-Trial Brief.^[27]

On 4 October 2002, the RTC declared defendant Rogelio in default because of his failure to file pre-trial brief, and allowed plaintiff-appellee Ikeda to present evidence *ex-parte*.^[28]

Plaintiff-appellee Ikeda testified on her behalf,^[29] and manifested that no additional witness would be presented, and that plaintiff-appellee Ikeda was adopting the evidence presented at the hearing for the application for the writ of preliminary attachment,^[30] as part of her evidence in chief.

The evidence of plaintiff-appellee Ikeda is summarized thus: plaintiff-appellee Ikeda suffered actual damages (*i.e.*, Php 2,000,000.00 paid to defendant Rogelio; Php 1,356,156.25 paid to defendant Limpe; Php 100,000.00 paid to defendant Ariola as earnest money; Php 168,187.50 as capital gains tax; Php 50,176.75 for documentary stamps, litigation costs and attorney's fees) in the fraudulent transaction arising from the sale of the subject property; defendant Rogelio presented to the Office of the Register of Deeds, a fake owner's duplicate copy of TCT No. 265519 which defendant Rogelio later withdrew; the owner's duplicate copy of TCT No. 265519 presented by defendant Rogelio, and the original of TCT No. 265519 which is in the custody of the Office of the Register of Deeds, had several discrepancies (*i.e.*, "the number 30 of the prints the number 3 and 0 are very close to each other in the owner's duplicate title, while the 3 and 0 are very much separated in the original title kept at the vault of the Register of Deeds of Quezon City;"^[31] "the number 76 is a little bit separated from the word degree in the owner's duplicate title, whereas the same is very much near to each other in the original title kept at the vault of the Register of Deeds of Quezon City"^[32]); the entries in the primary entry book of the Office of the Register of Deeds show that defendant Rogelio had knowledge, prior to the sale of the subject property to plaintiff-appellee Ikeda, that the owner's duplicate copy of TCT No. 265519 was fake; despite knowledge of the defect in the owner's duplicate copy of TCT No. 265519, defendant Rogelio failed to inform plaintiff-appellee Ikeda, and defendant

Rogelio still received the Php 2,000,000.00 payment from plaintiff-appellee Ikeda which manifested defendant Rogelio's bad faith; defendant Santelices and witness Rosario Bautista Cunanan both testified that defendant Rogelio was notified of the falsity of the owner's duplicate copy of TCT No. 265519 when defendant Rogelio attempted to register the certificate of sale.

Plaintiff-appellee Ikeda filed Plaintiff's Memorandum.^[33]

On 20 September 2010, the RTC issued the assailed Decision. The dispositive portion of the assailed Decision stated:

WHEREFORE, the Court finds in favor of plaintiff Merlin O Ignacio-Ikeda and against defendant Rogelio Calapatia. Defendant Calapatia is ordered to pay plaintiff Ikeda the following:

- 1. Two Million Pesos (P 2,000,000.00) as actual damages;*
- 2. One Hundred Fifty Thousand Pesos (P 150,000.00) as moral damages;*
- 3. Seventy Five Thousand Pesos (P 75,000.00) as exemplary damages;*
- 4. Twenty Nine Thousand Three Hundred Seventy One Pesos and Thirty Centavos (P 29,371.30) for litigation expenses; and*
- 5. Seventy Five Thousand Pesos (P 75,000.00) as attorney's fees.*

The Clerk of Court is ordered to forthwith issue summons to defendants Felizarda Durana, Myrna Santiago and Lolita Alfonso.

The Court Sheriff is ordered to forthwith issue summons to defendants Natalie C. Limpe, Cristina C. Arriola and Corazon Cortez and make a return of service thereof within five (5) days from date of service.

Plaintiff is ordered to move in the premises, with regard to the other answering defendants, Antonio Vasquez, Viterbo Cahilig and Samuel C. Cleofe within fifteen (15) days from receipt of a copy of this Decision otherwise the case, as against said defendants shall be dismissed for lack of interest and failure to prosecute.

SO ORDERED.

Thus, this appeal by the defendants-appellants Brenda and Brian (substituting defendant Rogelio), with the following assignment of errors:

I.

THE PROCEEDINGS BEFORE THE COURT A QUO IS A NULLITY CONSIDERING THAT NO SUMMONS (*sic*) WERE SERVED TO THE PRINCIPAL DEFENDANTS NAMELY NATALIE C. LIMPE, CRISTINA C. ARRIOLA, CORAZON CORTES, FELIZARDA DURANA, MYRNA SANTIAGO AND LOLITA ALFONSO WHO ARE INDISPENSABLE PARTIES OF THE CASE.

II.

THE COURT A QUO ERRED IN FINDING THAT THE OWNER'S DUPLICATE COPY OF TRANSFER CERTIFICATE TITLE NO. 265519 IS FAKE.

III.