

## THIRD DIVISION

[ G.R. No. 194272, February 15, 2017 ]

**SPOUSES AMADO O. IBAÑEZ AND ESTHER R. IBAÑEZ,  
PETITIONERS, VS. JAMES HARPER AS REPRESENTATIVE OF THE  
HEIRS OF FRANCISCO MUÑOZ, SR., THE REGISTER OF DEEDS OF  
MANILA AND THE SHERIFF OF MANILA, RESPONDENTS.**

### DECISION

**JARDELEZA, J.:**

This is an Amended Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Revised Rules of Court assailing the Decision<sup>[2]</sup> dated October 29, 2009 (assailed Decision) and Resolution<sup>[3]</sup> dated September 29, 2010 (assailed Resolution) of the Court of Appeals (CA) in CA-G.R. SP No. 98623. The CA set aside the Orders dated August 11, 2006<sup>[4]</sup> and February 20, 2007<sup>[5]</sup> and reinstated the Order dated March 24, 2006<sup>[6]</sup> of the Regional Trial Court (RTC) of Manila, Branch 40, in Civil Case No. 97-86454.

### I

Sometime in October 1996, spouses Amado and Esther Ibañez (spouses Ibañez) borrowed from Francisco E. Muñoz, Sr. (Francisco), Consuelo Estrada (Consuelo) and Ma. Consuelo E. Muñoz (Ma. Consuelo) the amount of P1,300,000, payable in three months, with interest at the rate of 3% a month.<sup>[7]</sup>

On October 14, 1996, the spouses Ibañez issued a Promissory Note<sup>[8]</sup> binding themselves jointly and severally to pay Ma. Consuelo and Consuelo the loan amount with interest, to wit:

FOR VALUE RECEIVED, I jointly and severally, promise to pay to MA. CONSUELO E. MUÑOZ & CONSUELO C. ESTRADA, at their office at x x x, the principal sum of ONE MILLION THREE HUNDRED THOUSAND ONLY (P1,300,000.00), Philippine Currency, with interest thereon at the rate of three percent (3%) per month, subject to one (1%) percent penalty if not paid on monthly due date. Interest not paid when due shall be added to and become part of the principal and shall likewise bear interest at the same rate compounded monthly. Payable within a period of three (3) months from the date hereof, beginning Nov. 14, 1996 and every month thereafter, until the whole sum of principal and interest shall have been fully paid.

Upon default of three (3) monthly installments when due, all the other

installments shall become due and payable. Interest not paid when due shall be added to, and become part of the principal and shall likewise bear interest at the same rate, compounded monthly.<sup>[9]</sup>

As security, on October 17, 1996, the spouses Ibañez executed a Deed of Real Estate Mortgage<sup>[10]</sup> in favor of Ma. Consuelo and Consuelo over a parcel of land and its improvements covered by Transfer of Certificate Title (TCT) No. 202978. The mortgage contained the same terms as the promissory note. It further stipulated that Ma. Consuelo and Consuelo shall have the right to immediately foreclose the mortgage upon the happening of the following events: (1) filing by the mortgagor of any petition for insolvency or suspension of payment; and/or (2) failure of the mortgagor to perform or comply with any covenant, agreement, term or condition of the mortgage.<sup>[11]</sup>

On September 23, 1997, alleging that the conditions of the mortgage have been violated since November 17, 1996 and that all check payments were dishonored by the drawee, Ma. Consuelo and Consuelo applied for foreclosure of the real estate mortgage.<sup>[12]</sup>

On December 8, 1997, the spouses Ibañez filed in the RTC of Manila a Complaint<sup>[13]</sup> for injunction and damages with prayers for writ of preliminary injunction and temporary restraining order against Francisco, Ma. Consuelo, Consuelo, the Clerk of Court and *Ex-Officio* Sheriff, Sheriff-in-Charge and Register of Deeds of the City of Manila. Docketed as Civil Case No. 97-86454, the Complaint alleged that there is no reason to proceed with the foreclosure because the real estate mortgage was novated.<sup>[14]</sup> They prayed that the public auction of the property be enjoined and that Francisco, Ma. Consuelo and Consuelo be held liable for actual and compensatory, moral and exemplary damages, as well as attorney's fees and costs of suit.<sup>[15]</sup>

On December 12, 1997, the spouses Ibañez filed an Amended Complaint.<sup>[16]</sup> They alleged that the public auction was conducted, with Francisco, Ma. Consuelo and Consuelo as the highest bidders<sup>[17]</sup> and prayed that the *Ex-Officio* Sheriff and the Sheriff-in-Charge be enjoined from executing the certificate of sale in favor of Francisco, Ma. Consuelo and Consuelo. In the event the certificate of sale is already issued, they alternatively prayed for that the Register of Deeds of Manila be enjoined from registering the certificate of sale.<sup>[18]</sup>

On December 16, 1997, the RTC issued a *status quo* order.<sup>[19]</sup>

On June 11, 2002, the parties filed a Joint Motion for Approval of Amended Compromise Agreement.<sup>[20]</sup> The Amended Compromise Agreement,<sup>[21]</sup> signed by the spouses Ibañez and Francisco, for himself and on behalf of Ma. Consuelo and Consuelo, reads:

#### **AMENDED COMPROMISE AGREEMENT**

**PARTIES PLAINTIFFS and DEFENDANTS**, assisted by their respective counsels, unto this Honorable Court, most respectfully submit this **AMENDED COMPROMISE AGREEMENT**, to wit:

**I- STIPULATIONS OF THE PARTIES:**

1.1. On October 16, 1996, plaintiffs obtained a loan from the defendants, in the principal amount of **P1,300,000.00**, with interest thereon, **payable within three (3) months therefrom**;

1.2. The loan has been secured by a Real Estate Mortgage, constituted on a parcel of land, situated in the District of Singalong, Malate, Manila, containing an area of **135.70 Square Meters**, registered in the name of **Amado O. Iba[ñ]ez, married to Esther R. Iba[ñ]ez**, embraced under Transfer **Certificate of Title No. [202978]**, of the Registry of Deeds for the City of Manila;

1.3. Thereafter, the mortgage was extra-judicially foreclosed by the defendants, for failure to pay the loan obligation, plus interests due thereon, within the agreed period;

1.4. The property in question was not redeemed within the period prescribed by law. Hence, on **December 10, 1997**, after **Notice**, the Office of the Clerk of Court and Ex-Officio Sheriff of Manila, **sold the same property at public auction** where defendant Francisco E. Munoz, Sr. was the highest bidder;

1.5. However, the **Certificate of Sale**, was not issued in view of the institution by plaintiffs of the present case.

**II- TERMS AND CONDITIONS:**

2.1. The plaintiffs shall pay unto the defendants, the total sum of **THREE MILLION PESOS (P3,000,000.00)**, Philippine Currency, portion of which shall be paid through the proceeds of a real estate loan, being secured from the **Government Service[] Insurance System (GSIS)**, and the remaining balance, from such other sources determined by the plaintiffs, subject to the conformity of the defendants;

2.2. The defendants accept, as initial payment, the amount of **PESOS: TWO MILLION (P2,000,000.00) Philippine Currency**, from the proceeds of the said real estate loan to be released by the **Government Service[] Insurance System**

**(GSIS)**, which amount is hereby unconditionally committed by the plaintiffs to be paid in full to the defendants, immediately upon release thereof, or within a period of three (3) months from date of this agreement;

2.3. The amount to be released by the **Government Service Insurance System (GSIS)**, representing proceeds of the above-stated loan **shall be assigned by the plaintiffs, in favor of the defendants, upon execution of this agreement;**

2.4. The **remaining balance** of the total obligation stated in paragraph 2.1 above, amounting to **One Million (P1,000,000.00)**, shall be payable **within one (1) year from date hereof, with interest at the rate of two (2%) per month, and to be secured by a real estate mortgage**, to be constituted on a property registered in the names of the plaintiffs, situated at **Puerto Azul, Brgy. Zapang, Ternate, Cavite**, identified as **Lot 1-J** of the subdivision plan Psd-04-133674, portion of Lot 1, (LRC) Psd-88692, L.R.C. Record No. N-33296, containing an area of **Twenty (20) hectares**, more or less;

2.5. In the event, that the above-mentioned GSIS loan application will not materialize, parties hereby agree **to immediately cause the lifting or recall of the Status Quo Order issued by this Honorable Court, on December 16, 1997.** Thereafter, the defendants shall immediately cause the issuance of the **Certificate of Sale** over the subject property in their favor, and the plaintiffs agree not to further delay the same, with any Court action or otherwise;

2.6. Parties hereby agree to **WAIVE** such other claims by one party against the other, relative to or connected with the instant case;

2.7. In the event of failure of the plaintiffs to comply with any of the terms and conditions of this agreement, the defendants shall be entitled to a **Writ of Execution**, to implement this agreement of the parties.

**IN WITNESS WHEREOF**, parties have hereunto signed this **Compromise Agreement**, this x x x, in the City of Manila.

(Signed)  
**AMADO O. IBANEZ**  
Plaintiff

(Signed)  
**FRANCISCO E. MUNOZ,**  
**SR.**  
Defendant  
For himself and on behalf of  
his  
Co-defendants

(Signed)  
**ESTHER R. IBANEZ**  
Plaintiff

**ASSISTED BY:**

(Signed)  
**ATTY. CESAR G. VIOLA**  
Counsel for the Plaintiffs

(Signed)  
**ATTY. PROSPERO A.  
ANAVE**  
Counsel for the Defendants

x x x<sup>[22]</sup> (Emphasis and underscoring in the original.)

On June 17, 2002, the RTC approved the Amended Compromise Agreement and adopted it as its *Hato*.<sup>[23]</sup>

On September 24, 2002, the spouses Ibañez manifested that: (1) there will be a slight delay in their compliance due to new loan requirements of the Government Service Insurance System (GSIS);<sup>[24]</sup> and (2) they have executed a Real Estate Mortgage<sup>[25]</sup> dated August 10, 2002 in favor of Ma. Consuelo and Consuelo over a property covered by TCT No. T-77676, as per the parties' Amended Compromise Agreement.

On February 28, 2006, Atty. Roberto C. Bermejo (Atty. Bermejo), representing himself as collaborating counsel for Francisco, Ma. Consuelo and Consuelo, filed an Omnibus Motion for Execution and Lifting of the *Status Quo* Order of December 16, 1997 and for the Issuance of Writ of Possession.<sup>[26]</sup> Atty. Bermejo alleged that the spouses Ibañez failed to comply with their obligation under the Amended Compromise Agreement. Consequently, and following the terms of the Amended Compromise Agreement, the RTC's *status quo* order must be lifted and a certificate of sale over the subject property be immediately issued.<sup>[27]</sup>

On March 24, 2006, the RTC granted Atty. Bermejo's motion. It found that the spouses Ibañez have yet to pay the amount due, in violation of the terms of the Amended Compromise Agreement.<sup>[28]</sup> The Order dated March 24, 2006 reads:

WHEREFORE, in view of the foregoing, Order is issued: (1) lifting the status quo order of December 16, 1997; (2) directing the issuance of a writ of possession directing the private defendant[s] be placed in possession of the subject property; and (3) directing the Office of the Sheriff of Manila to issue a certificate of sale in favor of the private defendant[s].<sup>[29]</sup> (Emphasis omitted.)