

FIRST DIVISION

[G.R. No. 168078, January 13, 2016]

FABIO CAHAYAG AND CONRADO RIVERA, PETITIONERS, VS. COMMERCIAL CREDIT CORPORATION, REPRESENTED BY ITS PRESIDENT, LEONARDO B. ALEJANDRO; TERESITA T. QUA, ASSISTED BY HER HUSBAND ALFONSO MA. QUA; AND THE REGISTER OF DEEDS OF LAS PINAS, METRO MANILA, DISTRICT IV, RESPONDENTS.

[G.R. NO. 168357]

DULOS REALTY & DEVELOPMENT CORPORATION, REPRESENTED BY ITS PRESIDENT, JUANITO C. DULOS; AND MILAGROS E. ESCALONA, AND ILUMINADA D. BALDOZA, PETITIONERS, VS. COMMERCIAL CREDIT CORPORATION, REPRESENTED BY ITS PRESIDENT, LEONARDO B. ALEJANDRO; TERESITA T. QUA, ASSISTED BY HER HUSBAND ALFONSO MA. QUA; AND THE REGISTER OF DEEDS OF LAS PINAS, METRO MANILA, DISTRICT IV, RESPONDENTS.

D E C I S I O N

SERENO, C.J.:

Before us are consolidated Rule 45 Petitions^[1] seeking to nullify the Court of Appeals (CA) Decision dated 2 November 2004^[2] and Resolution dated 10 May 2005^[3] in CA-G.R. CV No. 47421. The CA Decision reversed and set aside the Decision dated 6 July 1992 issued by the Regional Trial Court (RTC), Branch 65 of Makati.^[4]

Factual Antecedents

Petitioner Dulos Realty was the registered owner of certain residential lots covered by Transfer Certificate of Title (TCT) Nos. S-39767, S-39775, S-28335, S-39778 and S-29776, located at Airmen's Village Subdivision, Pulang Lupa II, Las Pinas, Metro Manila.

On 20 December 1980, Dulos Realty obtained a loan from respondent CCC in the amount of ₱300,000. To secure the loan, the realty executed a Real Estate Mortgage over the subject properties in favor of respondent. The mortgage was duly annotated on the certificates of title on 3 February 1981.^[5]

On 29 March 1981, Dulos Realty entered into a Contract to Sell with petitioner Cahayag over the lot covered by TCT No. S-39775.^[6]

On 12 August 1981, Dulos Realty entered into another Contract to Sell, this time with petitioner Rivera over the lot covered by TCT No. S-28335.^[7]

Dulos Realty defaulted in the payment of the mortgage loan, prompting respondent CCC to initiate extrajudicial foreclosure proceedings. On 17 November 1981, the auction sale was held, with respondent CCC emerging as the highest bidder.^[8]

On 23 November 1981, a Certificate of Sale covering the properties, together with all the buildings and improvements existing thereon, was issued in favor of CCC.^[9] The Certificate of Sale was annotated on the corresponding titles to the properties on 8 March 1982.^[10]

Thereafter, or on 13 January 1983, Dulos Realty entered into a Contract to Sell with petitioner Escalona over the house and lot covered by TCTNo. S-29776.^[11]

On 10 November 1983, an Affidavit of Consolidation in favor of respondent CCC dated 26 August 1983 was annotated on the corresponding titles to the properties.^[12] By virtue of the affidavit, TCT Nos. S-39775, S-28335, S-39778 and S-29776 — all in the name of Dulos Realty — were cancelled and TCT Nos. 74531, 74532, 74533 and 74534 were issued in the name of respondent CCC on the same day.^[13]

On 10 December 1983, Dulos Realty entered into a Deed of Absolute Sale with petitioner Baldoza over the property covered by TCT No. S-39778, together with the improvements existing thereon.^[14]

On 21 December 1983, respondent CCC, through a Deed of Absolute Sale, sold to respondent Qua the same subject properties, now covered by TCT Nos. 74531, 74532, 74533 and 74534, which were in the name of respondent CCC. The sale was duly annotated on the corresponding titles to the properties on 5 January 1984.^[15]

Accordingly, TCT Nos. 74531, 74532, 74533 and 74534 were cancelled; and TCT Nos. 77012, 77013, 77014 and 770015 were issued to respondent Qua on 5 January 1984.^[16]

Subsequently, respondent Qua filed ejectment suits individually against petitioners Dulos Realty,¹⁷ Cahayag,^[18] Escalona,^[19] and Rivera^[20] before the Metropolitan Trial Court (MTC) of Las Pinas, Metro Manila.

The MTC rendered Decisions in favor of respondent Qua. It ordered Dulos Realty, Escalona, Cahayag, and Rivera to vacate the properties.

On 8 March 1988, the MTC issued a Writ of Execution to enforce its Decision dated 20 October 1986 in Civil Case No. 2257 against Dulos Realty "and all persons claiming right under defendant."^[21] The subject of the writ of execution was Lot 11 Block II,^[22] which was the lot sold by Dulos Realty to petitioner Baldoza.

**COMPLAINT FOR ANNULMENT OF
SHERIFF'S SALE AND OTHER DOCUMENTS**

On 5 December 1988, petitioners filed a Complaint against respondents for the "Annulment of Sheriff['s] Sale and Other Documents with Preliminary Injunction and/or Temporary Restraining Order" before the RTC of Makati City, where it was docketed as Civil Case No. 88-2599.^[23]

The Complaint^[24] alleged that petitioners Cahayag, Rivera, Escalona and Baldoza were owners of the properties in question by virtue of Contracts of Sale individually executed in their favor, and that the Real Estate Mortgage between Dulos Realty and defendant-appellant CCC did not include the houses, but merely referred to the lands themselves."^[25] Thus, the inclusion of the housing units in the Deed of Sale executed by respondent CCC in favor of respondent Qua was allegedly illegal.^[26]

Respondents failed to file an answer within the reglementary period. Subsequently, they were declared in default. They appealed the order of default but their appeal was dismissed on 8 February 1990.^[27]

On 6 July 1992, the RTC rendered a Decision,^[28] which ruled that the houses were not included in the Real Estate Mortgage; and that the foreclosure of the mortgage over the subject lots, as well as the housing units, was not valid.^[29] The trial court held that this conclusion was established by the plaintiffs' evidence, which went unrefuted when defendants were declared in default.^[30]

THE CA DECISION

Respondents proceeded to the CA, where they secured a favorable ruling. In its Decision rendered on 2 November 2004,^[31] the appellate court held that the extrajudicial foreclosure was valid, since the Real Estate Mortgage clearly included the buildings and improvements on the lands, subject of the mortgage.

After establishing the inclusion of the housing units in the Real Estate Mortgage, the CA determined the rights of the buyers in the Contracts to Sell/Contract of Sale vis-a-vis those of the mortgagee and its successor-in-interest.

In the cases of petitioners Cahayag, Rivera and Escalona, the CA pointed to lack of evidence establishing full payment of the price. As supporting reason, it stated that even if there were full payment of the purchase price, the mortgagee and the latter's successor-in-interest had a better right over the properties. The CA anchored this conclusion on the fact that the Real Estate Mortgage was annotated at the back of the titles to the subject properties before the execution of the Contracts to Sell. It said that the annotation constituted sufficient notice to third parties that the property was subject to an encumbrance. With the notice, Cahayag, Rivera and Escalona should have redeemed the properties within the one-year redemption period, but they failed to do so. Consequently, the right of respondent CCC over the properties became absolute, and the transfer to respondent Qua was valid.

As regards Baldoza, though the case involved a Contract of Sale, and not a mere Contract to Sell, the CA declared the transaction null and void on the purported ground that Dulos was no longer the owner at the time of the sale.

The CA accordingly reversed and set aside the RTC Decision, dismissed the case for lack of merit, and ordered petitioners to surrender possession of the properties to respondent Qua.

THE RULE 45 PETITIONS

On 30 May 2005, petitioners Cahayag and Rivera filed their Rule 45 Petition with this Court.^[32] For their part, petitioners Dulos Realty, Baldoza and Escalona filed their Rule 45 Petition on 19 July 2005.^[33]

In the Petition under G.R. No. 168357, it is argued, among others, that the Deed of Absolute Sale in favor of petitioner Baldoza was the culmination of a Contract to Sell between her and Dulos Realty. She claims that the Contract to Sell, *marked as Exhibit "L" during the trial*, was executed on 10 January 1979, which preceded the execution of the Deed of Real Estate Mortgage and the registration of the mortgage on 3 February 1981.^[34] After full payment of the price under the Contract to Sell, Dulos Realty executed the Deed of Absolute Sale. In other words, Baldoza is arguing that she has a better title to the property than respondent Qua since the unregistered contract to sell in her favor was executed before the registration of the mortgage. But the CA ignored Exhibit "L" and merely stated that there was only a Deed of Absolute Sale in favor of Baldoza.

THE ARGUMENTS

The arguments of petitioners, as stated in their respective Memoranda, are summarized as follows:

Coverage of the Mortgage

Initially, petitioners attempt to stave off the effects of the extrajudicial foreclosure by attacking the coverage of the Real Estate Mortgage with respect to its subject-matter.^[35] They draw attention to the fact that the List of Properties attached to the Deed of Real Estate Mortgage refers merely to the lands themselves and does not include the housing units found thereon.^[36] Petitioners also contend that doubts should be resolved against the drafter inasmuch as the agreement is a contract of adhesion, having been prepared by the mortgagee.^[37]

As backup argument for the theory that the houses are outside the coverage of the mortgage agreement, petitioners argue that the improvements were not owned by Dulos Realty, the mortgagor, but by its buyers under the Contracts to Sell and Contracts of Sale; hence, those improvements are excluded from the coverage of the real estate mortgage.

Validity of the Mortgage

Petitioners next challenge the validity of the foreclosure sale on the ground that the mortgage executed by the mortgagor (petitioner Dulos Realty) and the mortgagee (respondent CCC) was null and void.^[38] Petitioners claim that Dulos Realty was no longer the owner of the properties it had mortgaged at the time of the execution of the mortgage contract, as they were sold under existing Contracts to Sell and Deed

of Absolute Sale.^[39]

Petitioners Cahayag, Rivera and Escalona lean on the unregistered Contracts to Sell they had individually executed with Dulos Realty as vendor. For his part, petitioner Baldoza points to the Deed of Absolute Sale executed by Dulos Realty in his favor.

Better Right over the Properties

Petitioners claim that respondent CCC cannot claim to be a mortgagee in good faith, since it is a financial institution.^[40] As such, respondent CCC knew that it was dealing with a subdivision developer, which was in the business of selling subdivision lots.^[41] *Dela Merced v. GSIS*^[42] which states that the general rule that a mortgagee need not look beyond the title cannot benefit banks and other financial institutions, as a higher due diligence requirement is imposed on them.

They also raise the contention that lack of full payment of the purchase price under the Contracts to Sell on the part of Cahayag, Rivera and Escalona was due to respondent Qua's "harassment and unlawful actuations."^[43]

Petitioners further state that respondent Qua is a mere transferee of respondent CCC and that, like a stream, she cannot rise higher than her source. They also argue that Qua is not an innocent purchaser for value, since she is a former investor of respondent CCC and one of its principal stockholders.^[44]

No Prior Written HLURB Approval of the Mortgage

Finally, petitioners allege that the mortgage contract in this case was not approved by the HLURB, which violates Section 18 of P.D. 957^[45] and results in the nullity of the mortgage.

Exhibit "L" as Evidence of a Prior Contract to Sell

The matter of CA ignoring Exhibit "L" as evidence of a prior unregistered Contract to Sell was not included in the Memoranda of petitioners.

THE ISSUES

Based on the foregoing facts and arguments raised by petitioners, the threshold issues to be resolved are the following:

1. Whether the real mortgage covers the lands only, as enumerated in the Deed of Real Estate Mortgage or the housing units as well;
2. Whether Dulos Realty was the owner of the properties it had mortgaged at the time of its execution in view of the various Contracts to Sell and Deed of Absolute Sale respectively executed in favor of petitioners Cahayag, Rivera, Escalona and Cahayag;