

## THIRD DIVISION

[ G.R. No. 171286, June 02, 2014 ]

**DOLORES CAMPOS, PETITIONER, VS. DOMINADOR ORTEGA, SR.  
[1] AND JAMES SILOS RESPONDENTS.**

### D E C I S I O N

**PERALTA, J.:**

This petition for review on *certiorari* under Rule 45 of the 1997 Revised Rules on Civil Procedure (*Rules*) seeks the reversal of the August 12, 2005 Decision<sup>[2]</sup> and January 17, 2006 Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 76994, which set aside the November 12, 2002 Decision<sup>[4]</sup> of the Mandaluyong City Regional Trial Court, Branch 213 (*RTC*) and, in effect, dismissed petitioner's complaint for specific performance and damages.

On August 17, 1999, petitioner Dolores Campos, through her attorney-in-fact, Salvador Pagunsan (*Pagunsan*), filed a case for specific performance with damages against respondents Dominador Ortega, Sr. (*Ortega, Sr.*) and James Silos (*Silos*). The "Petition" stated, among others, that:

2. Plaintiff, and her husband [Ernesto Campos], along with their family, occupied the entire second level as well as the front portion of the ground level of a residential structure located at No. 208<sup>[5]</sup> F. Blumentritt Street, Mandaluyong City. The lot on which the said structure is standing is owned by the government, while the structure itself is owned by [Dominga Boloy] from whom plaintiff leased the same beginning in 1966;

2.1 Plaintiff had, in fact, paid the real estate taxes in behalf of Dominga Boloy in 1987, including the arrearages that accumulated from 1979 in view of the apparent abandonment by Dominga Boloy on these obligations x x x;

3. In 1977, under and pursuant to the Zonal Improvement Program [ZIP] of the then Metro Manila Commission,<sup>[6]</sup> in coordination with the Local Government of Mandaluyong, a census of the Hulo estate, where plaintiff's dwelling is located, was conducted wherein plaintiff was among those censused and qualified as a *bona fide* occupant x x x;

4. As a consequence of having qualified, plaintiff was assigned an identifying house tag number **77-00070-08** on August 20, 1977 x x x;

5. In 1979, after the death of the owner Dominga Boloy, plaintiff had a verbal understanding with Clarita Boloy, daughter-in-law of the former, to allow plaintiff to introduce improvements and renovations on the

structure, in which she incurred expenses amounting to about P10,000.00. It was further agreed that said amount shall be accordingly applied to their monthly rentals. x x x. The foregoing agreement, however, was never followed and plaintiff was made to continue paying the monthly obligations because of the assurance of Clarita Boloy that the expenses incurred by plaintiff will just be reimbursed in full, but even this latter agreement never materialized;

6. In 1987, Walter Boloy stepped into the situation and thru counsel demanded from the plaintiff and family the immediate vacation of the subject premises. An ejectment suit was eventually filed against plaintiff but [it] was later dismissed by the Metropolitan Trial Court (Branch 59, Mandaluyong City) in its February 12, 1986 decision x x x;

7. After receiving the said decision, and after having verified her husband's status as a *bona fide* [occupant], plaintiff forthwith authorized [her] nephew Salvador Pagunsan to follow up with the NHA the matter concerning the award of lot to them in line with the [ZIP], more particularly after learning that all bona fide occupants may be allowed to buy the structure if the owner has already died;

8. In the course of [the follow up], Salvador Pagunsan was informed by one Antonio Fernando thru a letter of July 20, 1987, that if Ernesto Campos, who was duly censused as a *bona fide* occupant, may be able to buy the property from Mr. Walter Boloy, Ernesto Campos may be awarded the lot on which the structure is located;

9. On November 19, 1987, plaintiff's attorney-in-fact, Salvador Pagunsan attended the meeting scheduled by the Arbitration and Awards Committee [AAC] held at the Budget Office of the Mandaluyong Municipal Hall x x x but[,] except for Atty. Eddie Fernandez, who represented the Local Government of Mandaluyong, no other representative from the NHA came. In said meeting, Atty. Fernandez gave plaintiff one month, or until December 19, 1987, to buy the property denominated as **Lot 17, Block 7, Phase III**, of the Hulo estate;

10. Plaintiff did not accede to the offer since the lot occupied by them and where they were duly censused as occupants is **Lot 18, Block 7**, whereas the one offered to be sold is Lot 17, which pertains to a different owner;

11. Another meeting was set on December 17, 1987, this time at the Administrator's Office of the Mandaluyong Municipal Hall x x x. Again, nobody attended from the NHA. On February 4, 1988, yet another meeting was set, and the same result happened;

12. But it was learned by plaintiff, however (sic), that on the same date, February 4, 1988, the property [was already] awarded to James Silos and Dominador Ortega, [Sr.], and that on **November 23, 1987**, just four days after the initial meeting scheduled by the [AAC] of the NHA (on November 19, 1987, paragraph <sup>[9]</sup>, supra) a Deed of Absolute Sale [was] executed by and between Clarita Boloy (in representation of Helen Telos

Boloy Williams) and Dominador Ortega, [Sr.] over **Lot 17, Block 7** x x x. This despite the fact that during the said initial meeting, plaintiff was given one month to exercise the option of buying the property;

13. In paragraph 5 of the aforementioned deed, the "xxx [V]endor warrants her legal and absolute ownership of the aforesaid semi-apartment house ...," which is highly disputable considering that no due transfer whatsoever was made by the structure owner Dominga Boloy who was still single at the time of her death and who died without issue. Moreover, in the earlier ejectment suit filed by Walter Boloy (paragraph [6], supra), his relation [to] Dominga Boloy was never proven[;] hence, his claim of any authority, and that of her daughter Helen Telos Boloy Williams, to deal with the property in any manner is completely baseless and a sham;

14. On **February 19, 1988**, a similar, or almost identical, Deed of Absolute Sale x x x was executed by and between the same parties in the instrument executed on November 23, 1987, only that this time, in [comparison] with the first deed of sale, it is very noticeable that the name of plaintiff Dolores Campos which was mentioned in paragraph 3 of the first deed as one of the renters and as a home-lot applicant was **omitted** in this second deed;

15. Plaintiff, thru her representative, inquired with the NHA and questioned the award of the lot to defendants who are disqualified for not having been duly censused either as renters or sharers, and also the matter regarding the alteration the lot number actually being occupied by plaintiff. But the NHA could not offer a satisfactory explanation to the seemingly irregular process. A certain Ms. Myrna Cuarin of the Legal Department refused to show the book containing the list of the qualified occupants and their respective true house tag number;

16. Plaintiff only came to know later that a Transfer Certificate of Title [was already] issued to Dominador Ortega, [Sr.] and James Silos over the lot despite the appeal made by plaintiff with the NHA, much to her damage and prejudice;

17. Defendants Dominador Ortega, Sr. and James Silos are disqualified to become lot owners since they were not duly censused as renters or sharers, pursuant to the ZIP Guideline Circular No. 1 dated [September 16, 1977] of the NHA x x x. Moreover, only those who have been actually residing in the ZIP Project area before August 15, 1975 shall be considered to qualify as beneficiaries, but herein defendants have commenced their residence only after the said date[;] hence, they are not qualified beneficiaries, but just the same the lot was awarded by the NHA to them;

18. The promptitude of the award by the NHA to herein defendants was maneuvered (sic) by the latter in circumvention of the real right that has already accrued to plaintiff as a *bona fide* applicant who has duly qualified as a beneficiary. In fact, she had been given the right to purchase the structure only to find out that it had been already

transferred to another in complete disregard of herein plaintiff's right (see paragraph 12, *supra*);

19. As a result of the bypassing of plaintiff's right[,], she was dislocated, [has] suffered sleepless nights, mental anguish, wounded feelings, and undue embarrassment, among others, the assessment of which in pecuniary terms is left to the sound discretion of this Honorable Court.

WHEREFORE, in view of the foregoing premises, it is most respectfully prayed of this Honorable Court that after due hearing a judgment be rendered declaring the acquisition by defendants of Lot 18, Block 7 of the Hulo Estate void for being in fraud of herein plaintiff; directing the defendants to surrender their title to the [NHA]; and directing the [NHA] to recognize plaintiff's right to purchase the structure and giving her reasonable opportunity to exercise said right.<sup>[7]</sup>

Respondents countered that the complaint stated no cause of action, and that, if any, such cause of action is already barred by prior judgment. They noted petitioner's admission in the *Verification* that an action for recovery of possession was commenced against her by respondents before the Pasig City RTC, Branch 153, involving the same property; that it was resolved in respondents' favor on October 12, 1992; and that such decision was affirmed by the CA on May 30, 1996 and became final and executory on September 14, 1996. Respondents also contended that the case was prematurely filed since there was no prior recourse to the barangay conciliation as required by Section 412 of the Revised Katarungang Pambarangay Law. Lastly, respondents argued that they are registered owners of the land in question as well as the house built thereon by virtue of Transfer Certificate of Title (TCT) No. 13342 and tax declarations, and that the Torrens title cannot be altered, modified or cancelled except through a direct proceeding.

Trial ensued. Presented as witnesses for the plaintiff were petitioner herself, Pagunsan, and Dolores Abad Juan, who claimed to be a bookkeeper of the NHA and a member of its census team in 1977.<sup>[8]</sup> Only Ortega, Sr. testified for and in behalf of the defendants.

On November 12, 2002, the RTC ruled in favor of petitioner. The dispositive portion of the Decision reads:

WHEREFORE, accordingly the acquisition of [DOMINADOR] V. ORTEGA and JAMES SILOS of Lot 18 Block 7 of the Hulo estate is hereby declared VOID for being violative of the right of the plaintiff. Herein defendants are hereby ordered to surrender their title to the National Housing Authority (NHA). Finally, the [NHA] is hereby ordered to recognize plaintiff's right to purchase the structure and give her reasonable time within which to exercise said right.

No pronouncement as to cost.

SO ORDERED.<sup>[9]</sup>

For lack of clear and convincing proof, the RTC rejected the allegation that respondents are guilty of committing fraud and, consequently, denied petitioner's claim for damages. Despite this, it held that the principle of *res judicata* is inapplicable and that petitioner has a vested right over the subject property. The trial court opined:

x x x The case being referred to by defendants is for the **recovery of possession** filed in Pasig City Court, which judgment was confirmed by the Honorable Court of Appeals. In that case, the appellate [court] ruled that the defendants in this case [have] better rights over the said property, it being titled under their names. Therefore, the cause of action in the previous case involves the right of possession over the disputed property. In the instant case, the cause of action is the violation of the plaintiff's right to exercise their right to buy the property in dispute within the period given by the Arbitration and Awards Committee of the National Housing Authority in [coordination] with the Local Government of Mandaluyong City. Thus, this court was never swayed by the [defendants'] argument that *res judicata* is present. There is no identity of the cause of action between the Pasig case and the instant case.

Under the Zonal Improvement Program Guideline Circular No. 1 dated September 16, 1977 of the National Housing [Authority], plaintiff is a qualified beneficiary of NHA's Zonal Improvement Program[,], she being in the premises since 1966 as lessee of a residential structure. According to the aforementioned circular, only occupants who have been actually residing in the ZIP project area either as sharer or renter before August 15, 1975 are qualified beneficiaries under this NHA program. The plaintiff was given until December 19, 1987 within which to buy the property located at Lot 17, Block 7[,], Phase III of the Hulo estate but did not exercise her right because the property involved is different from what she had been occupying since 1966 until they left. Before any clarification was made on this matter and before plaintiff could exercise [her] right to purchase, [she] learned that the property, Lot 18, Block [7], Phase III of Hulo estate was already sold to herein defendants in violation of her right. The court is convinced that plaintiff has acquired a vested right over the subject property. Such right is protected by law and a violation of said right will give rise to a valid cause of action.<sup>[10]</sup>

Upon appeal by respondents, the CA reversed the trial court's decision. In ruling that petitioner has no vested right over the subject parcel of land and the residential structure standing thereon, the appellate court pronounced:

To our mind, [respondents] correctly underscore the fact that, even from the testimonial evidence proffered by [petitioner], there is no gainsaying [of] their lease of the first floor of the residential structure owned by Dominga Boloy. Although the commencement of their contract with the latter had, admittedly, not been exactly established, the record ineluctably shows that both [respondents] had attended the meetings