

## **FIRST DIVISION**

**[ G.R. No. 188944, July 09, 2014 ]**

**SPOUSES RODOLFO BEROT AND LILIA BEROT PETITIONERS, VS.  
FELIPE C. SIAPNO, RESPONDENT.**

### **D E C I S I O N**

**SERENO, C.J.:**

Before us is a Petition for Review on Certiorari under Rule 45 of the 1997 Revised Rules on Civil Procedure assailing the Court of Appeals (CA) Decision dated 29 January 2009 in CA-G.R. CV No. 87995.<sup>[1]</sup> The assailed CA Decision affirmed with modification the Decision<sup>[2]</sup> in Civil Case No. 2004-0246-D issued by the Regional Trial Court (RTC), First Judicial Region of Dagupan City, Branch 42. The RTC Decision allowed the foreclosure of a mortgaged property despite the objections of petitioners claiming, among others, that its registered owner was impleaded in the suit despite being deceased.

### **THE FACTS**

Considering that there are no factual issues in this case, we adopt the findings of fact of the CA, as follows:

On May 23, 2002, Macaria Berot (or "Macaria") and spouses Rodolfo A. Berot (or "appellant") and Lilia P. Berot (or "Lilia") obtained a loan from Felipe C. Siapno (or "appellee") in the sum of P250,000.00, payable within one year together with interest thereon at the rate of 2% per annum from that date until fully paid.

As security for the loan, Macaria, appellant and Lilia (or "mortgagors", when collectively) mortgaged to appellee a portion, consisting of 147 square meters (or "contested property"), of that parcel of land with an area of 718 square meters, situated in Banaoang, Calasiao, Pangasinan and covered by Tax Declaration No. 1123 in the names of Macaria and her husband Pedro Berot (or "Pedro"), deceased. On June 23, 2003, Macaria died.

Because of the mortgagors' default, appellee filed an action against them for foreclosure of mortgage and damages on July 15, 2004 in the Regional Trial Court of Dagupan City (Branch 42). The action was anchored on the averment that the mortgagors failed and refused to pay the abovementioned sum of P250,000.00 plus the stipulated interest of 2% per month despite lapse of one year from May 23, 2002.

In answer, appellant and Lilia (or "Berot spouses", when collectively

[referred to]) alleged that the contested property was the inheritance of the former from his deceased father, Pedro; that on said property is their family home; that the mortgage is void as it was constituted over the family home without the consent of their children, who are the beneficiaries thereof; that their obligation is only joint; and that the lower court has no jurisdiction over Macaria for the reason that no summons was served on her as she was already dead.

With leave of court, the complaint was amended by substituting the estate of Macaria in her stead. Thus, the defendants named in the amended complaint are now the "ESTATE OF MACARIA BEROT, represented by Rodolfo A. Berot, RODOLFO A. BEROT and LILIA P. BEROT".

After trial, the lower court rendered a decision dated June 30, 2006, the decretal portion of which reads:

WHEREFORE, the Court hereby renders judgment allowing the foreclosure of the subject mortgage. Accordingly, the defendants are hereby ordered to pay to the plaintiff within ninety (90) days from notice of this Decision the amount of P250,000.00 representing the principal loan, with interest at two (2%) percent monthly from February, 2004 the month when they stopped paying the agreed interest up to satisfaction of the claim and 30% of the amount to be collected as and for attorney's fees. Defendants are also assessed to pay the sum of P20,000.00 as litigation expenses and another sum of P10,000.00 as exemplary damages for their refusal to pay their aforestated loan obligation. If within the aforestated 90-day period the defendants fail to pay plaintiff the above-mentioned amounts, the sale of the property subject of the mortgage shall be made and the proceeds of the sale to be delivered to the plaintiff to cover the debt and charges mentioned above, and after such payments the excess, if any shall be delivered to the defendants.

SO ORDERED.

Appellant filed a motion for reconsideration of the decision but it was denied per order dated September 8, 2006. Hence, this appeal interposed by appellant imputing errors to the lower court in -

1. SUBSTITUTING AS DEFENDANT THE ESTATE OF MACARIA BEROT WHICH HAS NO PERSONALITY TO SUE AND TO BE SUED;
2. APPOINTING RODOLFO BEROT AS A REPRESENTATIVE OF THE ESTATE OF THE DECEASED MACARIA BEROT TO THE PREJUDICE OF THE OTHER HEIRS, GRANTING FOR THE SAKE OF ARGUMENT THAT THE ESTATE OF MACARIA BEROT HAS A PERSONALITY TO SUE AND BE SUED;

3. NOT FINDING THE MORTGAGE NULL AND VOID, WHICH WAS ENTERED INTO WITHOUT THE WRITTEN CONSENT OF THE BENEFICIARIES OF THE FAMILY HOME WHO WERE OF LEGAL AGE;
4. MAKING DEFENDANTS LIABLE FOR THE ENTIRE OBLIGATION OF PH250,000.00, WHEN THE OBLIGATION IS ONLY JOINT;
5. IMPOSING ATTORNEY'S FEE(S) IN THE DISPOSITIVE PORTION WITHOUT MAKING A FINDING OF THE BASIS THEREOF IN THE BODY; AND
6. IMPOSING EXEMPLARY DAMAGES AND LITIGATION EXPENSES.

Appellant contends that the substitution of the estate of Macaria for her is improper as the estate has no legal personality to be sued.<sup>[3]</sup>

On 29 January 2009, the CA, through its Seventh Division, promulgated a Decision that affirmed the RTC Decision but with modification where it deleted the award of exemplary damages, attorney's fees and expenses of litigation. The appellate court explained in its ruling that petitioners correctly argued that a decedent's estate is not a legal entity and thus, cannot sue or be sued. However, it noted that petitioners failed to object to the trial court's exercise of jurisdiction over the estate of Macaria when the latter was impleaded by respondents by amending the original complaint.

<sup>[4]</sup> Adopting the rationale of the trial court on this matter, the CA held:

As aptly observed by the trial court:

It may be recalled that when the plaintiff filed his Amended Complaint substituting the estate of Macaria Berot in place of Macaria Berot as party defendant, defendants made no objection thereto. Not even an amended answer was filed by the defendants questioning the substitution of the estate of Macaria Berot. For these reasons, the defendants are deemed to have waived any objection on the personality of the estate of Macaria Berot. Section 1, Rule 9 of the Rules of Court provides that, 'Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived'. (Order dated September 8, 2006) <sup>[5]</sup> [Underscoring supplied]

The CA also found the action of respondent to be procedurally correct under Section 7, Rule 86 of the Rules of Court, when it decided to foreclose on the mortgage of petitioner and prove his deficiency as an ordinary claim.<sup>[6]</sup> The CA did not make a categorical finding that the nature of the obligation was joint or solidary on the part of petitioners.<sup>[7]</sup> It neither sustained their argument that the mortgage was invalid for having been constituted over a family home without the written consent of the

beneficiaries who were of legal age.<sup>[8]</sup> However, it upheld their argument that the award of exemplary damages and attorney's fees in favor of respondent was improper for lack of basis,<sup>[9]</sup> when it ruled thus:

WHEREFORE, the appealed decision is AFFIRMED with MODIFICATION in that the award of exemplary damages, attorney's fees and expenses of litigation is DELETED.

SO ORDERED.<sup>[10]</sup>

Petitioners moved for the reconsideration of the CA Decision, but their motion was denied through a Resolution dated 9 July 2009.<sup>[11]</sup> Aggrieved by the denial of their Motion for Reconsideration, they now come to us through a Petition for Review on Certiorari under Rule 45, proffering purely questions of law.

### THE ISSUES

The following are the issues presented by petitioners for resolution by this Court:

The Court of Appeals erred in:

1. Holding that the intestate estate of Macaria Berot could be a proper party by waiver expressly or impliedly by voluntary appearance;
2. In not holding that the obligation is joint<sup>[12]</sup>

### THE COURT'S RULING

We **DENY** the Petition for lack of merit.

Petitioners were correct when they argued that upon Macaria Berot's death on 23 June 2003, her legal personality ceased, and she could no longer be impleaded as respondent in the foreclosure suit. It is also true that her death opened to her heirs the succession of her estate, which in this case was an intestate succession. The CA, in fact, sustained petitioners' position that a deceased person's estate has no legal personality to be sued. Citing the Court's ruling in *Ventura v. Militante*,<sup>[13]</sup> it correctly ruled that a decedent does not have the capacity to be sued and may not be made a defendant in a case:

A deceased person does not have such legal entity as is necessary to bring action so much so that a motion to substitute cannot lie and should be denied by the court. An action begun by a decedent's estate cannot be said to have been begun by a legal person, since an estate is not a legal entity; such an action is a nullity and a motion to amend the party plaintiff will not, likewise, lie, there being nothing before the court to amend. Considering that capacity to be sued is a correlative of the capacity to sue, to the same extent, a decedent does not have the

capacity to be sued and may not be named a party defendant in a court action.

When respondent filed the foreclosure case on 15 June 2004 and impleaded Macaria Berot as respondent, the latter had already passed away the previous year, on 23 June 2003. In their Answer<sup>[14]</sup> to the Complaint, petitioners countered among others, that the trial court did not have jurisdiction over Macaria, because no summons was served on her, precisely for the reason that she had already died. Respondent then amended his Complaint with leave of court and substituted the deceased Macaria by impleading her intestate estate and identified Rodolfo Berot as the estate's representative. Thereafter, the case proceeded on the merits at the trial, where this case originated and where the Decision was promulgated.

It can be gleaned from the records of the case that petitioners did not object when the estate of Macaria was impleaded as respondent in the foreclosure case. Petitioner Rodolfo Berot did not object either when the original Complaint was amended and respondent impleaded him as the administrator of Macaria's estate, in addition to his being impleaded as an individual respondent in the case. Thus, the trial and appellate courts were correct in ruling that, indeed, petitioners impliedly waived any objection to the trial court's exercise of jurisdiction over their persons at the inception of the case. In resolving the Motion for Reconsideration of petitioners as defendants in Civil Case No. 2004-0246-D, the RTC was in point when it ruled:

It may be recalled that when the plaintiff filed his Amended Complaint substituting the estate of Macaria Berot in place of Macaria Berot as party defendant, defendants made no objections thereto. Not even an amended answer was filed by the defendants questioning the substitution of the estate of Macaria Berot. For these reasons, the defendants are deemed to have waived any objection on the personality of the estate of Macaria Berot. Section 1, Rule 9 of the Rules of Court provides that, "Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. x x x. (Underscoring ours)<sup>[15]</sup>

Indeed, the defense of lack of jurisdiction over the person of the defendant is one that may be waived by a party to a case. In order to avail of that defense, one must timely raise an objection before the court.<sup>[16]</sup>

The records of the case show that on 9 November 2004, a hearing was held on the Motion for Leave to File filed by respondent to have her amended Complaint admitted. During the said hearing, the counsel for petitioners did not interpose an objection to the said Motion for Leave.<sup>[17]</sup> On 18 March 2005, a hearing was held on respondent's Motion to Admit Amended Complaint, wherein counsel for petitioners again failed to interpose any objection.<sup>[18]</sup> Thus, the trial court admitted respondent's Amended Complaint and ordered that a copy and a summons be served anew on petitioners.<sup>[19]</sup>

In an Order<sup>[20]</sup> dated 14 April 2005, the RTC noted that petitioners received the summons and the copy of the amended Complaint on 3 February 2005 and yet they