

SECOND DIVISION

[G.R. No. 162218, February 25, 2010]

**METROPOLITAN BANK AND TRUST COMPANY, PETITIONER, VS.
EDGARDO D. VIRAY, RESPONDENT.**

D E C I S I O N

CARPIO, J.:

The Case

Before the Court is a petition for review on certiorari^[1] assailing the Decision^[2] dated 21 August 2003 and Resolution^[3] dated 13 February 2004 of the Court of Appeals (CA) in CA-G.R. CV No. 43926, which reversed the Decision^[4] dated 21 September 2003 of the Regional Trial Court (RTC) of Cagayan de Oro City, Misamis Oriental, Branch 23, in Civil Case No. 91-309.

The Facts

On 7 July 1979, Rico Shipping, Inc., represented by its President, Erlinda Viray-Jarque, together with respondent Edgardo D. Viray (Viray), in their own personal capacity and as solidary obligors (the three parties collectively known as the debtors), obtained two separate loans from petitioner Metropolitan Bank and Trust Company (MBTC) in the total amount of P250,000. The debtors executed a promissory note promising to pay in four semi-annual installments of P62,500 starting on 23 January 1980, with 15% interest and 2% credit evaluation and supervision fee per *annum*. The two loans were subsequently renewed and secured by one promissory note. Under the note, the debtors made a total payment of P134,054 leaving a balance of P115,946 which remained unpaid despite demands by MBTC.

On 5 June 1981, the debtors executed another promissory note and obtained a loan from MBTC in the amount of P50,000, payable on 2 November 1981, with 16% interest and 2% credit evaluation and supervision fee per *annum*. On the due date, the debtors again failed to pay the loan despite demands to pay by MBTC.

On 3 September 1981, the debtors obtained a third loan from MBTC in the amount of P50,000 payable on 14 November 1981, with 16% interest and 2% credit evaluation and supervision fee per *annum*. Again, the debtors failed and refused to pay on due date.

MBTC filed a complaint for sum of money against the debtors with the RTC of Manila, Branch 4.^[5] On 28 April 1983, the RTC of Manila rendered a judgment in favor of MBTC.^[6] The dispositive portion of the decision states:

WHEREFORE, judgment is hereby rendered ordering defendants to pay jointly and severally plaintiff the following:

I - On the first cause of action:

(a) The sum of P50,000 with interest thereon at the rate of 16% per *annum* from date of filing of the complaint until fully paid;

(b) The sum equivalent to 1% per month of the principal obligation as penalty charge, computed likewise from the filing of the complaint;

II - On the second cause of action:

(a) The sum of P50,000 with interest thereon at the rate of 16% per *annum* from date of filing of the complaint until fully paid;

(b) The sum equivalent to 1% per month of the principal sum as penalty charge, computed from date of filing of the complaint;

III - On the third cause of action:

(a) The sum of P115,946.00 with interest thereon at the rate of 1% per *annum* from date of filing of the complaint until fully paid;

(b) The sum equivalent to 1% per month of the sum of P115,946.00 as penalty charge, computed from date of filing of the complaint;

IV -

(1) The sum of P15,000.00 as attorney's fees; and

(2) To pay the costs of suit.

SO ORDERED.

Meanwhile, on 29 December 1982, the government issued Free Patents in favor of Viray over three parcels of land (lots) designated as (1) Lot No. 26275, Cad-237 with an area of 500 square meters; (2) Lot No. 26276, Cad-237, with an area of 888 square meters; and (3) Lot No. 26277, Cad-237 with an area of 886 square meters, all situated in Barangay Bulua, Cagayan de Oro City, Misamis Oriental. Original Certificate of Title (OCT) Nos. P-2324, P-2325 and P-2326 were issued covering Free Patent Nos. [X-1] 10525, [X-1] 10526 and [X-1] 10527, respectively.

The OCT's containing the free patents were registered with the Registry of Deeds of Cagayan de Oro City on 18 January 1983. Written across the face of the OCT's were the following:

x x x To have and to hold said tract of land, with the appurtenances thereunto of right belonging unto the said EDGARDO D. VIRAY and to his heirs and assigns forever, subject to the provisions of Sections 118, 119, 121 as amended by P.D. No. 763, 122 and 124 of Commonwealth Act No. 141, as amended, which provide that except in favor of the Government or any of its branches, units or institutions, the land thereby acquired shall be inalienable and shall not be subject to encumbrance for a period of five (5) years from the date of this patent, and shall not be liable for the satisfaction of any debt contracted prior to the expiration of said period x x x.^[7]

On 6 March 1984, the RTC of Manila issued a writ of execution over the lots owned by Viray. On 12 October 1984, pursuant to the writ of execution, the City Sheriff of Cagayan de Oro sold the lots at public auction in favor of MBTC as the winning bidder. The next day, the sheriff issued a Certificate of Sale to MBTC.^[8]

On 23 August 1990, the sheriff executed a Deed of Final Conveyance to MBTC. The Register of Deeds of Cagayan de Oro City cancelled OCT Nos. P-2324, P-2325 and P-2326 and issued in MBTC's name Transfer Certificate of Title (TCT) Nos. T-59171, T-59172 and T-59173,^[9] respectively.

On 30 July 1991, Viray filed an action for annulment of sale against the sheriff and MBTC with the RTC of Cagayan de Oro City, Misamis Oriental, Branch 23.^[10] Viray sought the declaration of nullity of the execution sale, the sheriff's certificate of sale, the sheriff's deed of final conveyance and the TCT's issued by the Register of Deeds.

On 21 September 1993, the RTC of Cagayan de Oro City rendered its decision in favor of MBTC.^[11] The dispositive portion states:

Wherefore, based on facts and jurisprudence, the Auction Sale by the Sheriff of the then lots of plaintiff covered by [free] patents to satisfy the judgment in favor of Defendant Bank is considered valid. While plaintiff had until April 2, 1991 to redeem the property, the former never attempted to show interest in redeeming the properties, and therefore such right has prescribed. Defendant Bank therefore is declared as the lawful transferee of the three (3) lots now covered by Titles in the name of Defendant Bank.

SO ORDERED.^[12]

Viray filed an appeal with the CA alleging that the RTC of Cagayan de Oro City committed reversible error in ruling solely on the issue of redemption instead of the issue of validity of the auction sale, being the *lis mota*^[13] of the action.

The Ruling of the Court of Appeals

On 21 August 2003, the appellate court reversed the decision of the RTC of Cagayan

de Oro City. The CA ruled that the auction sale conducted by the sheriff was null and void *ab initio* since the sale was made during the five-year prohibition period in violation of Section 118 of Commonwealth Act No. 141 (CA 141) or the Public Land Act. The dispositive portion states:

WHEREFORE, in view of the foregoing considerations, the decision appealed from is hereby REVERSED, and plaintiff-appellant Edgardo Viray is declared entitled to the return and possession of the three (3) parcels of land covered by O.C.T. Nos. P-2324, P-2325 and P-2326, without prejudice to his continuing obligation to pay the judgment debt, and expenses connected therewith.

Accordingly, the Register of Deeds of Cagayan de Oro City is ordered to cancel TCT Nos. T-59171, T-59172 and T-59173 in the name of defendant-appellee Metrobank, and to restore O.C.T. Nos. P-2324, P-2325 and P-2326 in the name of plaintiff-appellant Edgardo Viray.

No pronouncement as to costs.

SO ORDERED.^[14]

MBTC filed a Motion for Reconsideration which was denied in a Resolution dated 13 February 2004.

Hence, the instant petition.

The Issue

The main issue is whether the auction sale falls within the five-year prohibition period laid down in Section 118 of CA 141.

The Court's Ruling

The petition lacks merit.

Petitioner MBTC insists that the five-year prohibition period against the alienation or sale of the property provided in Section 118 of CA 141 does not apply to an obligation contracted before the grant or issuance of the free patent or homestead. The alienation or sale stated in the law pertains to voluntary sales and not to "forced" or execution sales.

Respondent Viray, on the other hand, maintains that the express prohibition in Section 118 of CA 141 does not qualify or distinguish whether the debt was contracted prior to the date of the issuance of the free patent or within five years following the date of such issuance. Further, respondent asserts that Section 118 of CA 141 absolutely prohibits any and all sales, whether voluntary or not, of lands acquired under free patent or homestead, made within the five-year prohibition period.