

SECOND DIVISION

[G.R. No. 165300, April 23, 2010]

ATTY. PEDRO M. FERRER, PETITIONER, VS. SPOUSES ALFREDO DIAZ AND IMELDA DIAZ, AND REINA COMANDANTE AND SPOUSES BIENVENIDO PANGAN AND ELIZABETH PANGAN, RESPONDENTS.

DECISION

DEL CASTILLO, J.:

The basic questions to be resolved in this case are: *Is a waiver of hereditary rights in favor of another executed by a future heir while the parents are still living valid? Is an adverse claim annotated on the title of a property on the basis of such waiver likewise valid and effective as to bind the subsequent owners and hold them liable to the claimant?*

This Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court assails the December 12, 2003 Decision^[2] of the Court of Appeals (CA) in CA-G.R. CV No. 70888.^[3] Said Decision modified the June 14, 2001 Summary Judgment^[4] of the Regional Trial Court (RTC) of Quezon City in Civil Case No. Q-99-38876 by holding respondents Spouses Bienvenido and Elizabeth Pangan (the Pangans) not solidarily liable with the other respondents, Spouses Alfredo and Imelda Diaz (the Diazes) and Reina Comandante (Comandante), to petitioner Atty. Pedro M. Ferrer (Atty. Ferrer). Likewise assailed is the CA Resolution^[5] dated September 10, 2004 which denied petitioner's as well as respondents Spouses Diaz and Comandante's respective motions for reconsideration.

The parties' respective versions of the factual antecedents are as follows:

Version of the Petitioner

Petitioner Atty. Ferrer claimed in his original Complaint^[6] that on May 7, 1999, the Diazes, as represented by their daughter Comandante, through a Special Power of Attorney (SPA),^[7] obtained from him a loan of P1,118,228.00. The loan was secured by a Real Estate Mortgage Contract^[8] by way of second mortgage over Transfer Certificate of Title (TCT) No. RT-6604^[9] and a Promissory Note^[10] payable within six months or up to November 7, 1999. Comandante also issued to petitioner postdated checks to secure payment of said loan.

Petitioner further claimed that prior to this or on May 29, 1998, Comandante, for a valuable consideration of P600,000.00, which amount formed part of the abovementioned secured loan, executed in his favor an instrument entitled Waiver of Hereditary Rights and Interests Over a Real Property (Still Undivided),^[11] the

pertinent portions of which read:

I, REINA D. COMANDANTE, of legal age, Filipino, married, with residence and postal address at No. 6, Road 20, Project 8, Quezon City, Metro Manila, Philippines, for a valuable consideration of SIX HUNDRED THOUSAND PESOS (P600,000.00) which constitutes my legal obligation/loan to Pedro M. Ferrer, likewise of legal age, Filipino, married to Erlinda B. Ferrer, with residence and postal address at No. 9, Lot 4, Puerto Rico Street, Loyola Grand Villas, Quezon City, Metro Manila, Philippines, by virtue of these presents, do hereby WAIVE, and/or REPUDIATE all my hereditary rights and interests as a legitimate heir/daughter of Sps. Alfredo T. Diaz and Imelda G. Diaz in favor of said Pedro M. Ferrer, his heirs and assigns over a certain parcel of land together with all the improvements found thereon and which property is more particularly described as follows:

TRANSFER CERTIFICATE OF TITLE
NO. RT-6604 (82020) PR-18887

x x x x

and which property is titled and registered in the name of my parents Alfredo T. Diaz and Imelda G. Diaz, as evidenced by Transfer Certificate of Title No. RT 6604 (82020) PR-18887.

(sgd.)
REINA D. COMANDANTE
Affiant

On the basis of said waiver, petitioner executed an Affidavit of Adverse Claim^[12] which he caused to be annotated at the back of TCT No. RT-6604 on May 26, 1999.

The Diazes, however, reneged on their obligation as the checks issued by Comandante were dishonored upon presentment. Despite repeated demands, said respondents still failed and refused to settle the loan. Thus, petitioner filed on September 29, 1999 a Complaint^[13] for Collection of Sum of Money Secured by Real Estate Mortgage Contract against the Diazes and Comandante docketed as Civil Case No. Q-99-38876 and raffled to Branch 224 of RTC, Quezon City.

Petitioner twice amended his complaint. First, by including as an alternative relief the Judicial Foreclosure of Mortgage^[14] and, second, by impleading as additional defendants the Pangans as the mortgaged property covered by TCT No. RT-6604 was already transferred under their names in TCT No. N-209049. Petitioner prayed in his second amended complaint that all the respondents be ordered to jointly and solidarily pay him the sum of P1,118,228.00, exclusive of interests, and/or for the judicial foreclosure of the property pursuant to the Real Estate Mortgage Contract.

Version of the Respondents

In her Answer^[15] to petitioner's original complaint, Comandante alleged that

petitioner and his wife were her fellow members in the Couples for Christ Movement. Sometime in 1998, she sought the help of petitioner with regard to the mortgage with a bank of her parents' lot located at No. 6, Rd. 20, Project 8, Quezon City and covered by TCT No. RT-6604. She also sought financial accommodations from the couple on several occasions which totaled P500,000.00. Comandante, however, claimed that these loans were secured by chattel mortgages over her taxi units in addition to several postdated checks she issued in favor of petitioner.

As she could not practically comply with her obligation, petitioner and his wife, presented to Comandante sometime in May 1998 a document denominated as Waiver of Hereditary Rights and Interests Over a Real Property (Still Undivided) pertaining to a waiver of her hereditary share over her parents' abovementioned property. Purportedly, the execution of said waiver was to secure Comandante's loan with the couple which at that time had already ballooned to P600,000.00 due to interests.

A year later, the couple again required Comandante to sign the following documents: (1) a Real Estate Mortgage Contract over her parents' property; and, (2) an undated Promissory Note, both corresponding to the amount of P1,118,228.00, which petitioner claimed to be the total amount of Comandante's monetary obligation to him exclusive of charges and interests. Comandante alleged that she reminded petitioner that she was not the registered owner of the subject property and that although her parents granted her SPA, same only pertains to her authority to mortgage the property to banks and other financial institutions and not to individuals. Petitioner nonetheless assured Comandante that the SPA was also applicable to their transaction. As Comandante was still hesitant, petitioner and his wife threatened to foreclose the former's taxi units and present the postdated checks she issued to the bank for payment. For fear of losing her taxi units which were the only source of her livelihood, Comandante was thus constrained to sign the mortgage agreement as well as the promissory note. Petitioner, however, did not furnish her with copies of said documents on the pretext that they still have to be notarized, but, as can be gleaned from the records, the documents were never notarized. Moreover, Comandante claimed that the SPA alluded to by petitioner in his complaint was not the same SPA under which she thought she derived the authority to execute the mortgage contract.

Comandante likewise alleged that on September 29, 1999 at 10:00 o` clock in the morning, she executed an Affidavit of Repudiation/Revocation of Waiver of Hereditary Rights and Interests Over A (Still Undivided) Real Property,^[16] which she caused to be annotated on the title of the subject property with the Registry of Deeds of Quezon City on the same day. Interestingly, petitioner filed his complaint later that day too.

By way of special and affirmative defenses, Comandante asserted in her Answer to the amended complaint^[17] that said complaint states no cause of action against her because the Real Estate Mortgage Contract and the waiver referred to by petitioner in his complaint were not duly, knowingly and validly executed by her; that the Waiver of Hereditary Rights and Interests Over a Real Property (Still Undivided) is a useless document as its execution is prohibited by Article 1347 of the Civil Code,^[18] hence, it cannot be the source of any right or obligation in petitioner's favor; that the Real Estate Mortgage was of doubtful validity as she executed the same without

valid authority from her parents; and, that the prayer for collection and/or judicial foreclosure was irregular as petitioner cannot seek said remedies at the same time.

Apart from executing the affidavit of repudiation, Comandante also filed on October 4, 1999 a Petition for Cancellation of Adverse Claim (P.E. 2468) Under The Memorandum of Encumbrances of TCT No. RT-6604 (82020) PR-18887^[19] docketed as LRC Case No. Q-12009 (99) and raffled to Branch 220 of RTC, Quezon City. Petitioner who was impleaded as respondent therein moved for the consolidation of said case^[20] with Civil Case No. Q-99-38876. On June 24, 2000, Branch 220 of RTC, Quezon City ordered the consolidation of LRC Case No. Q-12009 (99) with Civil Case No. Q-99-38876. Accordingly, the records of the former case was forwarded to Branch 224.

For their part, the Diazes asserted that petitioner has no cause of action against them. They claimed that they do not even know petitioner and that they did not execute any SPA in favor of Comandante authorizing her to mortgage for the second time the subject property. They also contested the due execution of the SPA as it was neither authenticated before the Philippine Consulate in the United States nor notarized before a notary public in the State of New York where the Diazes have been residing for 16 years. They claimed that they do not owe petitioner anything. The Diazes also pointed out that the complaint merely refers to Comandante's personal obligation to petitioner with which they had nothing to do. They thus prayed that the complaint against them be dismissed.^[21]

At the Pangans' end, they alleged that they acquired the subject property by purchase in good faith and for a consideration of P3,000,000.00 on November 11, 1999 from the Diazes through the latter's daughter Comandante who was clothed with SPA acknowledged before the Consul of New York. The Pangans immediately took actual possession of the property without anyone complaining or protesting. Soon thereafter, they were issued TCT No. N-209049 in lieu of TCT No. RT-6604 which was cancelled. ^[22]

However, on December 21, 1999, they were surprised upon being informed by petitioner that the subject land had been mortgaged to him by the Diazes. Upon inquiry from Comandante, the latter readily admitted that she has a personal loan with petitioner for which the mortgage of the property in petitioner's favor was executed. She admitted, though, that her parents were not aware of such mortgage and that they did not authorize her to enter into such contract. Comandante also informed the Pangans that the signatures of her parents appearing on the SPA are fictitious and that it was petitioner who prepared such document.

As affirmative defense, the Pangans asserted that the annotation of petitioner's adverse claim on TCT No. RT-6604 cannot impair their rights as new owners of the subject property. They claimed that the Waiver of Hereditary Rights and Interests Over a Real Property (Still Undivided) upon which petitioner's adverse claim is anchored cannot be the source of any right or interest over the property considering that it is null and void under paragraph 2 of Article 1347 of the Civil Code.

Moreover, the Pangans asserted that the Real Estate Mortgage Contract cannot bind them nor in any way impair their ownership of subject property because it was not registered before the Register of Deeds.^[23]

All the respondents interposed their respective counterclaims and prayed for moral and exemplary damages and attorney's fees in varying amounts.

After the parties have submitted their respective pre-trial briefs, the Diazes filed on March 29, 2001 a Motion for Summary Judgment^[24] alleging that: *first*, since the documents alluded to by petitioner in his complaint were defective, he was not entitled to any legal right or relief; and, *second*, it was clear from the pleadings that it is Comandante who has an outstanding obligation with petitioner which the latter never denied. With these, the Diazes believed that there is no genuine issue as to any material fact against them and, hence, they were entitled to summary judgment.

On May 7, 2001, petitioner also filed a Motion for Summary Judgment,^[25] claiming that his suit against the respondents is meritorious and well-founded and that same is documented and supported by law and jurisprudence. He averred that his adverse claim annotated at the back of TCT No. RT-6604, which was carried over in TCT No. 209049 under the names of the Pangans, is not merely anchored on the Waiver of Hereditary Rights and Interests Over a Real Property (Still Undivided) executed by Comandante, but also on the Real Estate Mortgage likewise executed by her in representation of her parents and in favor of petitioner. Petitioner insisted that said adverse claim is not frivolous and invalid and is registrable under Section 70 of Presidential Decree (PD) No. 1529. In fact, the Registrar of Deeds of Quezon City had already determined the sufficiency and/or validity of such registration by annotating said claim, and this, respondents failed to question. Petitioner further averred that even before the sale and transfer to the Pangans of the subject property, the latter were already aware of the existence of his adverse claim. In view of these, petitioner prayed that his Motion for Summary Judgment be granted.

Ruling of the Regional Trial Court

After the filing of the parties' respective Oppositions to the said motions for summary judgment, the trial court, in an Order dated May 31, 2001,^[26] deemed both motions for summary judgment submitted for resolution. Quoting substantially petitioner's allegations in his Motion for Summary Judgment, it thereafter rendered on June 14, 2001 a Summary Judgment^[27] in favor of petitioner, the dispositive portion of which reads:

WHEREFORE, premises considered, summary judgment is hereby rendered in favor of plaintiff and against defendants by:

- a) ORDERING all defendants jointly and solidarily to pay plaintiff the sum of ONE MILLION ONE HUNDRED EIGHTEEN THOUSAND TWO HUNDRED TWENTY EIGHT PESOS (P1,118,228.00) which is blood money of plaintiff;
- b) ORDERING the Honorable Registrar of Deeds of Quezon City that the rights and interest of the plaintiff over subject property be annotated at the back of T.C.T. No. N-209049;
- c) SENTENCING all defendants to pay plaintiff's expenses of TEN