

## SECOND DIVISION

[ G.R. No. 172592, July 09, 2008 ]

**SPOUSES WILFREDO N. ONG AND EDNA SHEILA PAGUIO-ONG,  
PETITIONERS, VS. ROBAN LENDING CORPORATION,  
RESPONDENT.**

### D E C I S I O N

**CARPIO MORALES, J.:**

On different dates from July 14, 1999 to March 20, 2000, petitioner-spouses Wilfredo N. Ong and Edna Sheila Paguio-Ong obtained several loans from Roban Lending Corporation (respondent) in the total amount of P4,000,000.00. These loans were secured by a real estate mortgage on petitioners' parcels of land located in Binauganan, Tarlac City and covered by TCT No. 297840.<sup>[1]</sup>

On February 12, 2001, petitioners and respondent executed an Amendment to Amended Real Estate Mortgage<sup>[2]</sup> consolidating their loans inclusive of charges thereon which totaled P5,916,117.50. On even date, the parties executed a Dacion in Payment Agreement<sup>[3]</sup> wherein petitioners assigned the properties covered by TCT No. 297840 to respondent in settlement of their total obligation, and a Memorandum of Agreement<sup>[4]</sup> reading:

That the FIRST PARTY [Roban Lending Corporation] and the SECOND PARTY [the petitioners] agreed to consolidate and restructure all aforementioned loans, which have been all past due and delinquent since April 19, 2000, and outstanding obligations totaling P5,916,117.50. The SECOND PARTY hereby sign [*sic*] another promissory note in the amount of P5,916,117.50 (a copy of which is hereto attached and forms xxx an integral part of this document), with a promise to pay the FIRST PARTY in full within one year from the date of the consolidation and restructuring, otherwise the SECOND PARTY agree to have their "DACION IN PAYMENT" agreement, which they have executed and signed today in favor of the FIRST PARTY be enforced[.]<sup>[5]</sup>

In April 2002 (the day is illegible), petitioners filed a Complaint,<sup>[6]</sup> docketed as Civil Case No. 9322, before the Regional Trial Court (RTC) of Tarlac City, for declaration of mortgage contract as abandoned, annulment of deeds, illegal exaction, unjust enrichment, accounting, and damages, alleging that the Memorandum of Agreement and the Dacion in Payment executed are void for being *pactum commissorium*.<sup>[7]</sup>

Petitioners alleged that the loans extended to them from July 14, 1999 to March 20, 2000 were founded on several uniform promissory notes, which provided for 3.5% monthly interest rates, 5% penalty per month on the total amount due and demandable, and a further sum of 25% attorney's fees thereon,<sup>[8]</sup> and in addition,

respondent exacted certain sums denominated as "EVAT/AR."<sup>[9]</sup> Petitioners decried these additional charges as "illegal, iniquitous, unconscionable, and revolting to the conscience as they hardly allow any borrower any chance of survival in case of default."<sup>[10]</sup>

Petitioners further alleged that they had previously made payments on their loan accounts, but because of the illegal exactions thereon, the total balance appears not to have moved at all, hence, accounting was in order.<sup>[11]</sup>

Petitioners thus prayed for judgment:

a) Declaring the Real Estate Mortgage Contract and its amendments x x x as null and void and without legal force and effect for having been renounced, abandoned, and given up;

b) Declaring the "Memorandum of Agreement" xxx and "Dacion in Payment" x x x as null and void for being *pactum commissorium*;

c) Declaring the interests, penalties, Evat [*sic*] and attorney's fees assessed and loaded into the loan accounts of the plaintiffs with defendant as unjust, iniquitous, unconscionable and illegal and therefore, stricken out or set aside;

d) Ordering an accounting on plaintiffs' loan accounts to determine the true and correct balances on their obligation against legal charges only; and

e) Ordering defendant to [pay] to the plaintiffs: --

e.1 Moral damages in an amount not less than P100,000.00 and exemplary damages of P50,000.00;

e.2 Attorney's fees in the amount of P50,000.00 plus P1,000.00 appearance fee per hearing; and

e.3 The cost of suit.<sup>[12]</sup>

as well as other just and equitable reliefs.

In its Answer with Counterclaim,<sup>[13]</sup> respondent maintained the legality of its transactions with petitioners, alleging that:

x x x x

If the voluntary execution of the Memorandum of Agreement and Dacion in Payment Agreement novated the Real Estate Mortgage then the allegation of Pactum Commissorium has no more legal leg to stand on;

The Dacion in Payment Agreement is lawful and valid as it is recognized x x x under Art. 1245 of the Civil Code as a special form of payment whereby the debtor-Plaintiffs alienates their property to the creditor-Defendant in satisfaction of their monetary obligation;

The accumulated interest and other charges which were computed for more than two (2) years would stand reasonable and valid taking into consideration [that] the principal loan is P4,000,000 and if indeed it became beyond the Plaintiffs' capacity to pay then the fault is attributed to them and not the Defendant[.][14]

After pre-trial, the initial hearing of the case, originally set on December 11, 2002, was reset several times due to, among other things, the parties' efforts to settle the case amicably.[15]

During the scheduled initial hearing of May 7, 2003, the RTC issued the following order:

Considering that the plaintiff Wilfredo Ong is not around on the ground that he is in Manila and he is attending to a very sick relative, without objection on the part of the defendant's counsel, the initial hearing of this case is reset to June 18, 2003 at 10:00 o'clock in the morning.

Just in case [plaintiff's counsel] Atty. Concepcion cannot present his witness in the person of Mr. Wilfredo Ong in the next scheduled hearing, the counsel manifested that he will submit the case for summary judgment.[16] (Underscoring supplied)

It appears that the June 18, 2003 setting was eventually rescheduled to February 11, 2004 at which both counsels were present[17] and the RTC issued the following order:

The counsel[s] agreed to reset this case on April 14, 2004, at 10:00 o'clock in the morning. However, the counsels are directed to be ready with their memorand[a] together with all the exhibits or evidence needed to support their respective positions which should be the basis for the judgment on the pleadings if the parties fail to settle the case in the next scheduled setting.

x x x x[18] (Underscoring supplied)

At the scheduled April 14, 2004 hearing, both counsels appeared but only the counsel of respondent filed a memorandum.[19]

By Decision of April 21, 2004, Branch 64 of the Tarlac City RTC, finding on the basis of the pleadings that there was no *pactum commissorium*, dismissed the complaint.[20]

On appeal,[21] the Court of Appeals[22] noted that

x x x [W]hile the trial court in its decision stated that it was rendering judgment on the pleadings, x x x what it actually rendered was a summary judgment. A judgment on the pleadings is proper when the answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading. However, a judgment on the pleadings would not have been proper in this case as the answer

tendered an issue, i.e. the validity of the MOA and DPA. On the other hand, a summary judgment may be rendered by the court if the pleadings, supporting affidavits, and other documents show that, except as to the amount of damages, there is no genuine issue as to any material fact.<sup>[23]</sup>

Nevertheless, finding the error in nomenclature "to be mere semantics with no bearing on the merits of the case",<sup>[24]</sup> the Court of Appeals upheld the RTC decision that there was no *pactum commissorium*.<sup>[25]</sup>

Their Motion for Reconsideration<sup>[26]</sup> having been denied,<sup>[27]</sup> petitioners filed the instant Petition for Review on Certiorari,<sup>[28]</sup> faulting the Court of Appeals for having committed a clear and reversible error

I. . . . WHEN IT FAILED AND REFUSED TO APPLY PROCEDURAL REQUISITES WHICH WOULD WARRANT THE SETTING ASIDE OF THE SUMMARY JUDGMENT IN VIOLATION OF APPELLANTS' RIGHT TO DUE PROCESS;

II. . . . WHEN IT FAILED TO CONSIDER THAT TRIAL IN THIS CASE IS NECESSARY BECAUSE THE FACTS ARE VERY MUCH IN DISPUTE;

III. . . . WHEN IT FAILED AND REFUSED TO HOLD THAT THE MEMORANDUM OF AGREEMENT (MOA) AND THE DACION EN PAGO AGREEMENT (DPA) WERE DESIGNED TO CIRCUMVENT THE LAW AGAINST *PACTUM COMMISSORIUM*; and

IV. . . . WHEN IT FAILED TO CONSIDER THAT THE MEMORANDUM OF AGREEMENT (MOA) AND THE DACION EN PAGO (DPA) ARE NULL AND VOID FOR BEING CONTRARY TO LAW AND PUBLIC POLICY.<sup>[29]</sup>

The petition is meritorious.

Both parties admit the execution and contents of the Memorandum of Agreement and Dacion in Payment. They differ, however, on whether both contracts constitute *pactum commissorium* or *dacion en pago*.

This Court finds that the Memorandum of Agreement and Dacion in Payment constitute *pactum commissorium*, which is prohibited under Article 2088 of the Civil Code which provides:

The creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them. Any stipulation to the contrary is null and void."

The elements of *pactum commissorium*, which enables the mortgagee to acquire ownership of the mortgaged property without the need of any foreclosure proceedings,<sup>[30]</sup> are: (1) there should be a property mortgaged by way of security for the payment of the principal obligation, and (2) there should be a stipulation for automatic appropriation by the creditor of the thing mortgaged in case of non-payment of the principal obligation within the stipulated period.<sup>[31]</sup>