

## THIRD DIVISION

**[ G.R. No. 174711, September 17, 2008 ]**

**SALLY SUENO, PETITIONER, VS. LAND BANK OF THE  
PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

Before this Court is a Petition for Review on *Certiorari* filed by petitioner Sally Sueno (Sueno) seeking to reverse and set aside the Decision<sup>[1]</sup> dated 13 July 2006 of the Court of Appeals in CA-G.R. CV No. 79566, which affirmed the Decision<sup>[2]</sup> dated 24 January 2003 of the Regional Trial Court (RTC) of Marikina City, Branch 192, in LRC Case No. R-2002-551-MK; and the Resolution<sup>[3]</sup> dated 20 September 2006 of the appellate court which denied Sueno's Motion for Reconsideration. The RTC, in its Decision affirmed by the Court of Appeals, issued the Writ of Possession authorizing respondent Land Bank of the Philippines (LBP) to take physical possession of the two disputed parcels of land pursuant to its Consolidation of Ownership dated 2 April 2001.

The factual and procedural backdrop of this case are as follows:

On different occasions, Sueno obtained loans from LBP, the total sum of which reached P2,500,000.00, as evidenced by the Contracts of Loan<sup>[4]</sup> executed by the parties on 28 February 1996 and 9 October 1996. The loans were secured by Real Estate Mortgages over two parcels of land (subject properties) covered by Transfer Certificates of Title (TCTs) No. T-299900 and No. T-314839 registered in Sueno's name and registered with the Registry of Deeds of Marikina City. Subsequently, Sueno incurred default, which prompted LBP to cause the extrajudicial foreclosure of the mortgage constituted on the subject properties,<sup>[5]</sup> and the sale of said properties at a public auction. LBP was the highest bidder in the auction sale, as shown in the Certificate of Sale<sup>[6]</sup> dated 6 March 2000 in its favor.

Before the expiration on 6 March 2001 of the one-year period for the redemption of the subject properties, Sueno wrote LBP a letter<sup>[7]</sup> dated 16 February 2001 requesting a six-month extension of her period to redeem. Upon receipt of Sueno's letter, LBP informed her that she needed to post an initial amount of P115,000.00, so that LBP would not consolidate the titles to the subject properties in its name. The said amount shall be used to answer for penalties and surcharges that the Registry of Deeds may impose as a result of the failure of LBP to consolidate the titles to the subject properties within the required period.<sup>[8]</sup>

In partial compliance with the aforesaid condition, Sueno issued a check on 23 February 2001 in the amount of P50,000.00 with LBP as the payee. Upon receipt of Sueno's partial payment, LBP, in a letter dated 6 March 2001, reiterated its previous

condition that Sueno must post the full amount of P115,000.00 for LBP to approve her request for the extension of the redemption period. The LBP further warned Sueno that should she fail to pay the balance of P65,000.00 by 7 March 2001, it would proceed to consolidate the ownership of the subject properties in its name. Despite such warning, Sueno failed to remit the balance of P65,000.00.

Thus, in a letter dated 7 March 2001, LBP denied Sueno's request for an extension of the period to redeem the subject properties, and proceeded to consolidate ownership of the said properties in its name. Accordingly, TCTs No. 299900 and No. 314839 in Sueno's name were cancelled and were replaced by TCTs No. 411101 and 411102, respectively, in the name of LBP.

In order to acquire physical possession of the subject properties, LBP filed an *Ex Parte* Petition/Motion for the Issuance of Writ of Possession<sup>[9]</sup> before the RTC, docketed as LRC Case No. R-2002-551-MK. During the hearing set by the court for the issuance of the writ, Sueno manifested her Opposition<sup>[10]</sup> thereto on the ground that a novation of the original obligation was already effected by her and LBP, thereby extending the original period for the redemption of the subject properties. Therefore, the right of LBP to consolidate the titles to the subject properties in its name was held in abeyance pending Sueno's exercise of her right of redemption within the extended period.

In a Decision dated 24 January 2003, the RTC recognized the right of LBP to the possession of the subject properties as the registered owner thereof after having lawfully acquired the same at the auction sale. It dismissed Sueno's opposition to the pending Petition/Motion for utter lack of merit, since she failed to establish that she and LBP indeed agreed to extend the redemption period for the subject properties. Hence, the RTC granted the Petition/Motion of LBP for the issuance of a Writ of Possession, to wit:

WHEREFORE, petition being sufficient in form and substance, and the testimonial and documentary evidence well-founded, the same is hereby GRANTED.

Let a Writ of Possession be issued authorizing [LBP] to take physical possession of the properties covered by Transfer Certificate[s] of Title Nos. 411101 and 411102 of the Registry of Deeds for Marikina City registered in the name of [LBP] by virtue of the consolidation of ownership dated June 6, 2001.<sup>[11]</sup>

Unyielding, Sueno filed an appeal of the adverse RTC Decision before the Court of Appeals,<sup>[12]</sup> where it was docketed as CA-G.R. CV No. 79566.

On 13 July 2006, the Court of Appeals rendered a Decision dismissing Sueno's appeal and affirming the RTC Decision. According to the Court of Appeals, the records were bereft of evidence to prove that LBP granted Sueno's request for the extension of the redemption period for the subject properties, making Sueno's novation theory unacceptable. On the other hand, the appellate court ruled that the right of LBP to the possession of the subject properties became absolute after the expiration of the period of redemption without Sueno exercising her right to redeem. The decretal part of the assailed Court of Appeals Decision reads:

WHEREFORE, the instant appeal is DENIED and the assailed Decision dated January 24, 2003 of the RTC of Markina City, Branch 192 is hereby AFFIRMED.<sup>[13]</sup>

In its Resolution dated 20 September 2006, the appellate court denied Sueno's Motion for Reconsideration.

Sueno then proceeded to file this instant Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court raising the following issues:

I.

WHETHER OR NOT THERE WAS A VALID NOVATION ENTERED BY PARTIES FOR THE EXTENSION OF THE REDEMPTION PERIOD.

II.

WHETHER OR NOT THE ISSUANCE OF THE WRIT OF POSSESSION OF THE SUBJECT PROPERTIES TO LBP IS VALID.

Sueno argues that there was a novation of the original obligation of LBP allowing her to redeem the subject properties within a period of one year, when LBP consented to the extension of said period of redemption. Sueno insists that the acceptance of LBP of her check payment for the partial sum of P50,000.00, and its encashment of said check signifies its acquiescence to her request for an extension of the period of redemption for the subject properties.

We are not persuaded.

An obligation may be extinguished by novation, pursuant to Article 1292 of the Civil Code, which reads as follows:

ART. 1292. In order that an obligation may be extinguished by another which substitute the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other.

Novation is the extinguishment of an obligation by the substitution or change of the obligation by a subsequent one which extinguishes or modifies the first, either by changing the object or principal conditions, or by substituting another in place of the debtor, or by subrogating a third person in the rights of the creditor. In order for novation to take place, the concurrence of the following requisites are indispensable:

1. There must be a previous valid obligation;
2. There must be an agreement of the parties concerned to a new contract;
3. There must be the extinguishment of the old contract; and
4. There must be the validity of the new contract.<sup>[14]</sup>

The elements of novation clearly do not exist in the instant case. While it is true that there is a previous valid obligation (*i.e.*, the obligation of LBP to honor Sueno's right to redeem the subject property within a period of one year), such obligation expired at the same time as the redemption period on 6 March 2001. There is, however, no clear agreement between the parties to a new contract, again imposing upon LBP the obligation of honoring Sueno's right to redeem the subject properties within an extended period of six months. Without a new contract, the old contract cannot be considered extinguished.

The condition of LBP for the extension of the redemption period for the subject properties was plain and simple, that Sueno pay an initial amount of P115,000.00 for the extension of the redemption period. Sueno tendered a check for P50,000.00 in partial payment of the amount demanded by LBP. By accepting the check payment, LBP merely accepted partial compliance of Sueno with its demand, but it does not mean that LBP had conceded to the extension of the redemption period for such reduced amount. In fact, LBP promptly sent Sueno a letter dated 6 March 2001, which was duly received by the latter, explicitly and consistently requiring payment of the full amount of P115,000.00 for the extension of the redemption period. It is without doubt that LBP was still expecting Sueno to pay the balance of P65,000.00. Hence, not until full payment of the amount it demanded, for LBP had not yet agreed to extend the period for redemption of the subject properties.

The consent of LBP to an extension of the period to redeem is subject to the suspensive condition that Sueno shall pay the initial amount of P115,000.00 in full. With Sueno's failure to remit the balance of P65,000.00 to LBP, then there is non-perfection of a new contract. As aptly declared by the Court of Appeals:

The parties are bound to fulfill the stipulations in a contract only upon its perfection. At anytime prior to the perfection of a contract, unaccepted offers and proposals remain as such and cannot be considered binding commitments, hence, not demandable. Since [Sueno] failed to perform what was incumbent upon her then, [LBP] cannot be faulted in not granting the extension sought. x x x.<sup>[15]</sup>

What further belies Sueno's assertion that LBP consented to her request for extension is its letter dated 7 March 2006, again duly received by Sueno, categorically denying her request to lengthen the redemption period. The language and intent of the letter is too clear and simple to be misinterpreted, to wit:

We wish to inform you that **the management denied your request to extend the redemption period of your foreclosed property for six (6) months** since you failed to comply with the Bank's requirement, upfront payment of P115,000.00.

Hence, the Bank is now consolidating the transfer of its ownership in the name of Land Bank. Enclosed is the P50,000.00 Manager's Check re: your upfront payment refunded to you.<sup>[16]</sup> (Emphasis supplied).

Irrefragably, there is no mutual agreement to extend the original period for the redemption of the subject properties. There is no common intent by the parties to novate the old obligation by extending the period thereof.

For this Court to sustain Sueno's position - that the LBP agreed to extend the