

SECOND DIVISION

[G.R. No. 146595, June 20, 2003]

CARLO A. TAN, PETITIONER, VS. KAAKBAY FINANCE CORPORATION, DENNIS S. LAZARO AND ROLDAN M. NOYNAY, RESPONDENTS.

RESOLUTION

QUISUMBING, J.:

Petitioner seeks the review and reversal of the decision of the Court of Appeals, dated August 22, 2000 in CA-G.R. SP No. 58379,^[1] which affirmed the orders of the Regional Trial Court (RTC), Branch 37, Calamba, Laguna, dated February 8, 2000 and March 29, 2000 in Civil Case No. 2881-2000-C entitled "*Carlo A. Tan v. Kaakbay Finance Corporation, Dennis S. Lazaro and Roldan M. Noytay*"^[2] for declaration of nullity of the Promissory Note purportedly attached to the Real Estate Mortgage, the usurious and unlawful or exorbitant and unconscionable rates of interest and fees therein, and the Deed of Sale Under *Pacto de Retro*. Likewise, assailed is the appellate court's resolution^[3] dated December 20, 2000, denying petitioner's motion for reconsideration.

The facts, as culled from the records, are as follows:

In the latter part of 1995, petitioner Carlo^[4] A. Tan applied for and was granted a loan of four million pesos (P4,000,000.00) by private respondent Kaakbay Finance Corporation (Kaakbay), as represented by its president, private respondent Dennis S. Lazaro. As collateral, a real estate mortgage^[5] on petitioner Tan's parcel of land with the improvements therein all covered by Transfer Certificate Title No. T-207125^[6] located along Rizal St., Calamba, Laguna was executed. Petitioner alleged that the stipulated interest was 12% per annum until fully paid, which amount however, was not stated in the mortgage when he signed it on November 16, 1995. The amount loaned was released to him in two installments of P2,500,000.00 and P1,500,000.00 on November 23, 1995 and December 23, 1995, respectively.

As of November 22, 1996, petitioner failed to pay his obligation. He claimed that Kaakbay never furnished him a copy of the real estate mortgage; that, according to Kaakbay, his obligation had now reached P5,570,000.00 because the actual interest was 0.3925% for a period of less than one year instead of the agreed-upon interest of 12% per annum; and that he was made to issue two postdated checks to guarantee his obligation, namely: UCPB Check No. CBA 052985 in the amount of P5,570,000.00 postdated to November 5, 1996; and UCPB Check No. CBA 095215 in the amount of P6,175,000.00 postdated to January 31, 1997.^[7]

Petitioner further alleged that he negotiated with Kaakbay for a further extension of

time to pay his obligation, which the latter agreed to. It was agreed that petitioner and Kaakbay would sign, execute, and acknowledge a Deed of Sale Under *Pacto de Retro* upon the expiration of a two-year period starting January 8, 1998 to January 8, 2000. Petitioner was then given a blank Deed of Sale Under *Pacto de Retro* on January 8, 1998 which he signed.^[8] His suspicions that Kaakbay was charging him usurious rates of interest were confirmed when he obtained a Statement of Account stating that his obligation had now reached P13,333,750.00.^[9]

On October 21, 1999, petitioner learned of the existence of an accomplished Deed of Sale Under *Pacto de Retro*, which appeared that the same was signed by him and his wife Maria Rosario Delmo Tan, on one hand, and private respondent Lazaro on the other, and was allegedly notarized by private respondent Atty. Roldan M. Noynay on February 5, 1998,^[10] when in truth and in fact, he, his wife, and their witness Charito Morales did not sign it on said date, nor did they execute it before Atty. Noynay or any other notary public on said date.

On January 5, 2000, petitioner filed a complaint for Declaration of Nullity, Invalidity and Unenforceability or Annulment of the Promissory Notes purportedly attached to the Real Estate Mortgage dated November 16, 1995, the usurious and void rates of interest and other fees therein appearing, and the Deed of Sale Under *Pacto De Retro* purportedly dated February 5, 1998, and damages, with prayer for Preliminary Injunction and/or Temporary Restraining Order against respondents Kaakbay Finance Corporation, Dennis S. Lazaro and Roldan M. Noynay,^[11] with the RTC Calamba, Laguna, and docketed as Civil Case No. 2881-2000-C. The complaint essentially prayed that herein petitioner's obligation to Kaakbay Finance Corporation in the amount of P4,000,000.00 be subject to interest of only 12% per annum from November 23, 1995; that the promissory notes attached to his Real Estate Mortgage dated November 16, 1995 be declared null and void; that the Deed of Sale Under *Pacto de Retro* dated February 5, 1998 be declared unenforceable; and that respondents pay moral and exemplary damages in the amount of P200,000.00 and P50,000.00, respectively, as well as attorney's fees.

On the same date, petitioner filed a Notice of *Lis Pendens* with the Registry of Deeds of Calamba, Laguna, which was annotated on TCT No. 207125.^[12]

On January 17, 2000, respondents, through their counsel, Atty. Roldan M. Noynay, filed their `Consolidated Answer With Compulsory Counterclaim And Opposition To Temporary Restraining Order (TRO) and Preliminary Injunction.'^[13]

During the hearing of petitioner's application for the issuance of a TRO, the parties agreed in open court that petitioner would withdraw his application for a TRO, while respondents in turn would hold in abeyance the registration of the Deed of Sale Under *Pacto de Retro* until the case was terminated. The trial court issued an order to that effect, dated January 17, 2000.^[14]

Later, the law firm of Ortega, Del Castillo, Bacorro, Odulio, Calma, and Carbonell entered its appearance as counsel for respondents.^[15] Said counsel requested for an extension of time to file an Answer, and also moved for the withdrawal of the `Consolidated Answer'^[16] filed by Atty. Noynay insofar as respondents Kaakbay and Lazaro are concerned.^[17] Respondents also filed a `Supplemental Opposition To

The Prayer For Preliminary Injunction Or To Temporary Injunction.'^[18]

On February 3, 2000, respondents, through the new counsel, filed their Answer with Counterclaim,^[19] praying that petitioner pay them four million pesos (P4,000,000.00) representing the principal amount of the loan, nine million three hundred thirty three thousand seven hundred fifty pesos (P9,333,750.00) representing the 'compounded monthly interest and annual penalty interest', two hundred fifty thousand pesos (P250,000.00) as litigation expenses, and five hundred thousand pesos (P500,000.00) as attorney's fees.

In addition, respondents filed a Motion for Admission of Counterclaim Without Payment of Fees, on the ground that their counterclaim is compulsory in nature, hence it may be admitted without payment of fees.^[20]

On February 21, 2000, petitioner filed an Urgent Motion to Expunge Motions and Pleadings Filed by Defendants Kaakbay Finance Corporation and Dennis S. Lazaro, Particularly Their Answer with Counterclaim and Motion for Admission of Counterclaim both Dated February 3, 2000 and/or Comment/Opposition (To Said Defendants' Manifestation and Supplemental Opposition to their Prayer for Preliminary Injunction and to Temporary Injunction Dated January 24, 2000 and February 3, 2000 Respectively).^[21] In this motion, petitioner pointed out that the respondents were being represented by their counsel, the law firm of Ortega, Del Castillo, Bacorro, Odulio, Calma, and Carbonell without stating if said law firm is in collaboration with or in substitution of their previous counsel, respondent Atty. Roldan M. Noynay. Petitioner argued that the procedure laid down in the rules concerning the change or substitution of counsel of a party litigant had not been properly complied with by the respondents, and thus the motions filed by the said law firm should be expunged. In addition, petitioner argued that respondents' Answer with Counterclaim should not be admitted, as it partook of the nature of a permissive counterclaim, which required the payment of the prescribed filing fees; and since the fees were not paid, the lower court did not acquire jurisdiction over said Answer.

In its order of February 8, 2000, the trial court granted respondents' motion for admission of counterclaim without payment of fees.^[22]

Petitioner then filed a "Supplemental Motion by Way of Motion for Reconsideration" but this was denied.

Petitioner seasonably appealed to the Court of Appeals where he maintained that the trial court committed grave abuse of discretion in admitting the answer with counterclaim, which contains a permissive counterclaim the correct filing fees of which have not been paid by respondents Kaakbay and Lazaro to the trial court. Thus, petitioner insisted that the trial court had not acquired jurisdiction over the said answer with counterclaim. Alternatively, petitioner urged that said answer be expunged from the record of the case *a quo*.

On August 22, 2000, the appellate court promulgated its decision, decreeing as follows: