

## **SPECIAL FIRST DIVISION**

**[ G.R. No. 133547 and G.R. No. 133843, November 11, 2003 ]**

**HEIRS OF ANTONIO PAEL AND ANDREA ALCANTARA AND CRISANTO PAEL, PETITIONERS, VS. COURT OF APPEALS, JORGE H. CHIN AND RENATO B. MALLARI, RESPONDENTS.**

**MARIA DESTURA, PETITIONER, VS. COURT OF APPEALS, JORGE H. CHIN AND RENATO MALLARI, RESPONDENTS.**

### **R E S O L U T I O N**

**PUNO, J.:**

This treats of the Report submitted to this Court by the Former Special Fourth Division of the Court of Appeals, dated July 30, 2003, pursuant to our Resolution, dated December 7, 2001, directing said court to receive evidence on the conflicting claims over the subject properties covered by TCT Nos. 52928 and 52929 between private respondents Jorge H. Chin and Renato B. Mallari, on the one hand, and intervenor University of the Philippines (UP), on the other.

The case at bar is another crass attempt to grab part of the Diliman Campus of the University of the Philippines. Over and over again, this Court has ruled that the title of UP over its Diliman Campus is indefeasible and beyond dispute. We cannot deviate from this ruling.

The facts reveal that on December 9, 1993, Maria Destura filed a complaint before the Regional Trial Court of Quezon City against her husband, Pedro Destura, together with Jorge Chin and Renato Mallari. The complaint sought the annulment of the memorandum of agreement (MOA) dated March 26, 1992 executed by Chin and Mallari as first parties, Pedro Destura as second party, and Jaime Lumansag, Jr. as third party, over Lot Nos. 588-A and 588-B located in Barrio Culiati, Quezon City, covered by TCT No. 52928 and TCT No. 52929. It alleged that Chin and Mallari were former agents of Pedro Destura, authorized to sell Lot Nos. 588-A and 588-B, then covered by TCT No. 36048; that when Destura came from Canada, he discovered that the title to the land has been transferred to Chin and Mallari in whose names TCT No. 52928 and TCT No. 52929 were registered; that Chin and Mallari executed the MOA subject of the complaint to appease Destura; that the MOA stated that Chin and Mallari had a buyer of the lots and they promised to pay Destura one hundred million pesos (P100,000,000.00) upon finality of the sale; that the sale did not materialize and the payment of the promised amount has become uncertain, to the prejudice of the Destura spouses. The complaint also sought the annulment of TCT No. 52928 and TCT No. 52929 as they were allegedly obtained through fraudulent means. It prayed that the Register of Deeds issue a new title in the name of the Destura spouses.<sup>[1]</sup>

The case was dismissed against Pedro Destura after he and his wife entered into an amicable settlement.

Chin and Mallari, meanwhile, were declared in default for failure to file their Answer.  
[2]

On January 24, 1995, the trial court rendered a judgment by default. The trial court nullified the MOA in question. It ruled:

On the issue of the *memorandum of agreement*, it is to be noted that under its express terms the payment of the P100,000,000.00 to Pedro Destura depended on the sale of the properties covered by Transfer Certificates of Title Nos. 52928 and 52929 to the alleged ready buyer of the third party, Jaime B. Lumansag, Jr. Since no sale materialized in accordance therewith because the buyer backed out of the transactions, the agreement lost its efficacy. Pursuant to Art. 1181, Civil Code, upon the non-fulfillment of the condition, the obligation of the defendants under the *memorandum of agreement* did not take effect and Destura ceased to be bound thereby.

That the fulfillment of the condition, i.e., the payment of the P100,000,000.00 to Destura, already became uncertain and indefinite is also established competently and conclusively. As a consequence, the memorandum of agreement should be nullified because it was made to depend upon a condition that was void for being dependent upon the sole will of the debtors.[3]

The trial court likewise nullified TCT No. 52928 and TCT No. 52929. It found:

Concerning the validity of the transfers of the certificates of title into the names of defendants Mallari and Chin, the records competently and credibly show that highly suspicious circumstances attended such transfers of registered ownership resulting in the issuance of Transfer Certificates of Title Nos. 52928 and 52929. **The transfers were by virtue of two deeds of sale covering the land described in Transfer Certificate of Title No. 36048** which appear to have been executed on the same date of December 10, 1978. **The vendors in the first deed of sale were the spouses Luis and Leony Menor and those in the other were Roberto Pael, Crisanto Pael, and Teofila Pael.** The deeds were supposedly notarized by a certain Catalino C. Manalaysay. Yet, as certified to by the Chief of the Archives Division, Records Management and Archives Office, no copy of the first deed of sale, Exhibit U, was available at said office because the latest notarial record on file under the name of Catalino C. Manalaysay was for the year 1964.

**Another document submitted to support the transfer of the property to the defendants was a deed of extra-judicial settlement of estate with waiver made and entered in among Crisanto, Roberto, Teofila, and Cresencia, all surnamed Pael, under date of December 27, 1965, by which the alleged heirs of Antonio Pael and Andrea Alcantara divided and adjudicated**

**among themselves the property covered by Transfer Certificate of Title No. 36048.** Again the Chief of the Archives Division, Records Management and Archives Office, certified that no copy of the document was available at said office because the notary public before whom the document appeared to have been acknowledged, one Catalino E. Dumlao, had no records thereat for the period from January, 1964 to December 18, 1967.

There was, moreover, a certification issued on September 2, 1992 by the Chief, Official Gazette Publication, National Printing Office, attested (*sic*) that there were no records in said office showing that a publication of LRC Case No. N-10792, LRC Record No. 7672, entitled *Spouses Antonio Pael and Andrea Alcantara, et al., Applicants, Petition of Extra-judicial Settlement* had been made in the Official Gazette. This contradicted the alleged *certificate of publication of notice of initial hearing*.

The sale appears to have been made in 1978. But if that was so, then it was fictitious, since the defendants willingly accepted appointments as the agents of Pedro Destura with authority to sell the property in his behalf only in 1990. Their act of accepting the appointment was a declaration against interest, in that they thereby admitted quite expressly the ownership of the property on the part of the Desturas as late as 1990, in effect debunking the alleged sale in 1978 in their favor. It is additionally relevant to note that this fact of Destura's ownership was further confirmed by the fact that the defendants caused the transfer of the certificates in their names only in 1992.<sup>[4]</sup>

The trial court then ordered the Register of Deeds of Quezon City to "cancel Transfer Certificates of Title Nos. 52928 and 52929 in the names of Jorge Chin and Renato B. Mallari and the transfer certificates of title from which said certificates were derived until but not including Transfer Certificate of Title No. 36048, and thereafter **reinstate Transfer Certificate of Title No. 36048 in the names of Spouses Antonio Pael and Andrea Alcantara and Crisanto Pael.**"<sup>[5]</sup>

On February 13, 1995, Atty. Oliver Lozano, counsel for Chin and Mallari, filed a notice of appeal.<sup>[6]</sup> The following day, the trial court approved the notice of appeal and forwarded the records to the Court of Appeals.<sup>[7]</sup>

A week later, Atty. Lozano filed a motion for new trial and a supplemental motion.<sup>[8]</sup>

On August 28, 1995, the trial court denied the motion for new trial for lack of merit. It also dismissed the appeal previously allowed on the ground of abandonment. The trial court's decision was thus declared final and executory.<sup>[9]</sup>

In September 1997, Chin and Mallari, assisted by new counsel, Atty. Samuel Alentaje, filed before the Court of Appeals a Petition for Annulment of Judgment. They claimed that the gross negligence of their former counsel, Atty. Lozano, constituted extrinsic fraud which prevented them from presenting their case before the trial court. They also assailed the trial court's order cancelling their title and upholding the title of the **Paels who were not parties to the case.**<sup>[10]</sup>

On April 29, 1998, the Court of Appeals rendered a decision<sup>[11]</sup> in favor of Chin and Mallari. It annulled the decision of the trial court upon finding that the gross and reckless negligence of their former counsel which caused them to be declared in default and which later led to the dismissal of their appeal and finality of the judgment amounted to extrinsic fraud. Further, the appellate court reversed the order of the trial court canceling TCT No. 52928 and TCT No. 52929 and reinstating TCT No. 36048 registered in the name of the Paels. It also rejected Maria Destura's claim over the property. It instead upheld the validity of the sale of 70% of the property by a certain Luis and Leony Menor and 30% thereof by the Paels to Chin and Mallari. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the decision dated January 24, 1995 and the Order dated August 28, 1995, both issued in Civil Case No. Q-93-18569, are hereby ANNULLED and SET ASIDE, and accordingly judgment is issued:

a) DECLARING as valid the memorandum of agreement dated March 26, 1992;

b) DECLARING as null and void both the cancellation of the titles, Transfer Certificates of Title Nos. 52928 and 52929 of petitioners Jorge H. Chin and Renato B. Mallari over the subject property and the reinstatement of the title Transfer Certificate No. 36048, in the names of Antonio Pael, Andrea Alcantara and Crisanto Pael;

c) DECLARING the petitioners as the true and absolute owners of the subject property and ORDERING the Register of Deeds of Quezon City to REINSTATE the aforementioned titles, TCT Nos. 52928 and 52929 in favor of petitioners Jorge H. Chin and Renato B. Mallari;

xxx xxx xxx<sup>[12]</sup>

The case was elevated to this Court by the Heirs of Pael and by Maria Destura via separate petitions for review.

The Heirs of Pael argued in G.R. No. 133547:

1. The Honorable Court of Appeals gravely misappreciated, ignored, misapplied and/or overlooked the fact that under the facts and circumstances of this case, the annulment of judgment is improper as there was no extrinsic fraud or reckless and gross negligence committed by private respondents' former counsel, Atty. Oliver Lozano, hence, the assailed decision of the appellate court should be stricken down for being without credible basis.
2. The Honorable Court of Appeals seriously erred in not holding that assuming arguendo that extrinsic fraud and gross and reckless negligence were committed by Atty. Lozano, private respondents were bound by said extrinsic fraud and gross and reckless negligence as they themselves contributed to the commission of such fraud and negligence of their counsel.

3. The Honorable Court of Appeals gravely erred in not holding that the revival of the title in favor of Antonio Pael and Andrea Alcantara and Crisanto Pael, even if they are not parties to the case below, was a logical consequence of the default judgment.
4. The Honorable Court of Appeals gravely erred in not holding that since the default judgment had already long become final and executory, consequently the reinstatement of the titles of private respondent and the declaration as null and void of the title in the names of Antonio Pael and Andrea Alcantara and Crisanto Pael were erroneous and improper.
5. The Honorable Court of Appeals gravely erred when in its decision it adjudicated the case on the merits, which is procedurally flawed.  
[13]

Destura raised the following errors in G.R. No. 133843:

1. The ruling of the respondent Court of Appeals that private respondents are not bound by the negligence and incompetence of their counsel is erroneous and contrary to law and jurisprudence.
2. The ruling of the respondent Court of Appeals that the gross negligence of counsel for private respondents constitutes "extrinsic fraud" is likewise erroneous and contrary to law and jurisprudence.
3. Granting for the sake of argument, that there is basis to annul the questioned decision, the action of respondent Court of Appeals in adjudicating the merits of the case is contrary to Section 7, Rule 47 of the Rules of Court.
4. The findings of the respondent Court of Appeals that the interest of the private respondent in the subject property over that of petitioner is not borne out by any evidence in the records of the case in the trial court.  
[14]

On February 10, 2000, this Court rendered a Decision denying both petitions and affirming the title of Chin and Mallari over the property.

The Heirs of Pael and Destura filed separate motions for reconsideration. During their pendency, the University of the Philippines (UP) filed a motion for intervention, [15] alleging that the properties covered by TCT Nos. 52928 and 52929 in the names of Chin and Mallari form part of its Diliman Campus, registered in the name of UP under TCT No. 9462.

On December 7, 2001, this Court denied the motions for reconsideration of Destura and the Heirs of Pael, but granted the motion for intervention filed by UP. The Court remanded the case to the Court of Appeals for reception of evidence on the conflicting claims over the property in question by Chin and Mallari as against UP.  
[16]

On July 30, 2003, the Former Special Fourth Division of the Court of Appeals