

ELEVENTH DIVISION

[CA-G.R. CV NO. 102087, March 05, 2015]

MANUEL M. GONZALES, PLAINTIFF-APPELLANT, VS. ROSARIO R. CARANAY, ROSELLE MARIE R. CARANAY, REGISTER OF DEEDS OF QUEZON CITY AND THE ASSESSOR'S OFFICE OF QUEZON CITY, DEFENDANTS-APPELLEES.

DECISION

LIBREA-LEAGOGO, C.C., J.:

Before this Court is an appeal from the Decision^[1] dated 09 October 2013 and Order^[2] dated 16 December 2013 of the Regional Trial Court, National Capital Judicial Region, Branch 91, Quezon City in the case entitled "*Manuel M. Gonzales v. Rosario R. Caranay, et al.*" docketed as Civil Case No. Q-07-60977, which dismissed the Complaint and counterclaim and lifted the writ of attachment, and denied the Motion for Reconsideration for lack of merit, respectively.

Plaintiff-appellant and defendants-appellees filed their Briefs dated 19 August 2014^[3] and 01 October 2014,^[4] respectively. Per JRD verification^[5] dated 17 February 2015, plaintiff-appellant failed to comply with the Resolution^[6] dated 19 December 2014 which required him to inform this Court of the date of his receipt of the Appellees' Brief and to manifest if he is still filing a reply brief. Hence, plaintiff-appellant is deemed to have waived the filing of a reply brief and the case is submitted for decision.

FACTUAL ANTECEDENTS

Plaintiff Manuel M. Gonzales filed a Complaint^[7] dated 15 August 2007 against defendants Rosario R. Caranay ("Rosario," for brevity), Roselle Marie R. Caranay ("Roselle," for brevity), Register of Deeds of Quezon City ("QC RD," for brevity) and The Assessors Office of Quezon City ("Assessors Office," for brevity) for collection of sum of money, rescission and damages with prayer for preliminary attachment, before the Regional Trial Court of Quezon City, docketed as *Civil Case No. 07-60977*.

On 05 September 2007, plaintiff testified in connection with his prayer for the issuance of a writ of attachment.^[8] In an Order^[9] dated 07 September 2007, the trial court ordered the issuance of a writ of attachment, upon the plaintiff's posting of a Php3,000,000.00 bond. Plaintiff filed the required bond^[10] and in an Order^[11] dated 13 September 2007, the same was approved, and a Writ of Preliminary Attachment^[12] dated 17 September 2007 was issued.

Defendant Assessor's Office filed a Manifestation^[13] dated 09 October 2007 which prayed that the filing of a responsive pleading and its attendance on the scheduled date of hearing and all subsequent proceedings be dispensed with.

Individual defendants, represented by their attorney-in-fact Marcelo L. Tecson, filed their Answer with Counterclaim^[14] dated 16 October 2007. They also filed their Pre-Trial Brief^[15] dated 18 December 2007.

On 08 January 2008, plaintiff filed a Motion for Leave and to Admit etc.^[16] with attached Amended Complaint.^[17] Plaintiff averred in his Amended Complaint, *inter alia*, that: he is a retired entrepreneur occasionally engaged in the business of rediscounting or financing postdated checks; he charges a certain interest rate per month on the principal loan or on each issued check; defendant Rosario is a professional real estate broker and is also engaged in the business of buying and selling real estate properties using her own personal funds; plaintiff and defendant Rosario have been neighbors for more than 15 years since both reside at BF Homes Subdivision, Quezon City; plaintiff and his wife became close friends of defendant Rosario; because of defendant Rosario's close relationship with plaintiff's family, she was able to sell some real estate properties to plaintiff and his family; because of the friendship and close family ties, plaintiff and his family fully trusted defendant Rosario and considered her as a member of their own family; sometime in July 1995, defendant Rosario approached plaintiff and his wife seeking financial assistance; she wanted to borrow the sum of Php3,000,000.00 because she needed to finance one of the real estate projects she was then developing; she offered to pay interest, at the rate of 3% per month or Php90,000.00 per month until the whole loan has been paid; she also proposed to issue sixteen (16) postdated checks to cover the amount of the loan; defendant Rosario assured the plaintiff and his wife that her checks were fully funded and would not be dishonored when encashed; plaintiff and his wife agreed to lend her the said amount; on 09 August 1995, plaintiff and his wife gave defendant Rosario Php3,000,000.00 in cash; in return, defendant Rosario issued sixteen (16) postdated checks, with various dates, as staggered payment for the principal loan exclusive of the monthly interest of 3% on the said loan; during the first week of September 1995, defendant Rosario informed the plaintiff and his wife that she had no sufficient funds in her bank account to cover the said checks and pleaded to them not to deposit the same because the said checks would surely be dishonored; she explained that her real estate project hit a snag but would soon pick-up and promised that as soon as her real estate project materializes she would inform plaintiff when to deposit the same; greatly disappointed but conscious of their friendship, plaintiff agreed; plaintiff reminded her that she must continue paying the monthly interest on the said loan; since then and until January 2002, defendant Rosario consistently paid plaintiff the stipulated monthly interest on her loan; however, since February 2002 she already failed to pay; on several occasions, plaintiff demanded payment for the whole loan, which were left unheeded; defendant Rosario assured plaintiff that she would pay her loan as soon as she sells a couple of her real estate properties located in Bulacan; on the first week of May 2007, plaintiff again demanded payment for the whole loan from defendant Rosario; to plaintiff's shock, however, she replied that she had already paid her financial obligation and owes nothing to him; on 20 May 2007, plaintiff through counsel, sent a demand letter dated 18 May 2007 informing defendant Rosario to immediately settle her obligations, which she received on the same day, to which she did not respond; plaintiff inquired on the status of ownership over defendant Rosario's residential house ("subject property," for brevity) with the Quezon City Assessor's Office and Register of Deeds for fear that she might have already transferred the same to a third person to defraud her creditors; he

discovered that on 03 March 2005, defendant Rosario transferred the subject property to her daughter, defendant Roselle, by way of gratuitous title; an Extrajudicial Settlement of Estate with Waiver of Rights dated 03 March 2002 was executed; however, plaintiff discovered that the Deed of Extrajudicial Settlement of Estate of Leoncio Caranay with waiver of rights was not notarized by a commissioned notary public; upon verification from the Office of the Clerk of Court of Caloocan City, plaintiff learned that Atty. Buenaventura Medina, Jr. who notarized the said Deed on 03 March 2005 was not commissioned by the Regional Trial Court of Caloocan City to notarize documents for the years 2005-2007; there were no copies of the said Deed found in its files and records; thus, the said Deed never became a public document; the Office of the Clerk of Court of the RTC of Caloocan City issued a certificate stating that Atty. Buenaventura Medina, Jr. is not a commissioned notary public officer of the RTC of Caloocan City; defendant Rosario's acts were calculated to defraud creditors so that the subject property would not be the object of an attachment or an execution; and the transfer that defendant Rosario made to her daughter defendant Roselle was null and void.

It was further averred that: from the time that plaintiff made a demand upon defendant Rosario for the latter to pay her debt, she continuously refused to pay the same; defendant Rosario's obligation became due on February 2002; despite demands, defendant Rosario failed to settle her financial obligation to the plaintiff; defendant Rosario should be ordered to pay the plaintiff the amount of Php3,000,000.00 as payment for the whole loan and legal interest from February 2002 until the full amount is paid; and defendant QC RD should be ordered to reconvey TCT No. 279991 to defendant Rosario because the said transfer was null and void and defendant Roselle merely holds in trust the subject property in her mother's favor. Plaintiff further stated his allegations in support of his prayer for a writ of preliminary attachment. It was prayed that, pending the hearing of the case, a writ of attachment be immediately issued, ordering the sheriff to attach the subject property covered by TCT No. 279991 registered with the QC RD under the name of defendant Roselle, to serve as security for the satisfaction of any judgment that may be awarded. It was also prayed that, after due hearing, judgment be rendered: declaring the Deed of Extrajudicial Settlement of Estate of Leoncio Caranay with Waiver of Rights dated 03 March 2005 as a Deed of Donation, which is null and void; and that defendant Roselle merely holds in trust the subject property covered by TCT No. 279991 for defendant Rosario and the conveyance made be declared null and void. It was further prayed that an Order be issued directing the defendant QC RD to reconvey TCT No. 279991 to defendant Rosario; and defendant Rosario be ordered to pay the plaintiff moral and exemplary damages, attorney's fees and litigation expenses.

Individual defendants filed their Comment/Opposition *etc.*^[18] dated 23 January 2008 praying that the Motion for Leave to File and to Admit be denied and the Amended Complaint be not admitted. In an Order^[19] dated 05 February 2008, the Motion for Leave to File and to Admit was granted and the Amended Complaint was admitted.

On 22 February 2008, individual defendants filed an Amended Answer with Counterclaim.^[20] It was denied, *inter alia*, that: defendant Rosario is engaged in the business of buying and selling real estate properties using her own personal funds; plaintiff and defendants have been neighbors for more than fifteen (15) years; and

defendant Rosario was considered as a member of plaintiff's own family. It was admitted, *inter alia*, that: they reside in the same subdivision but not neighbors in its literal meaning because it can be gleaned from the (Amended) Complaint that both parties reside along different streets; they admit that checks have been issued; and the subject property was transferred from defendant Rosario to defendant Roselle.

By way of special and affirmative defenses, defendants alleged, *inter alia*, that: the controversy started when defendant Rosario met Corazon Mejia ("Mejia," for brevity) and Erle Gidaya ("Gidaya," for brevity) way back in 1994 when both were engaged in providing supplies to Camp Crame and Camp Aguinaldo; later on, Mejia informed defendant Rosario that they have an approved ten-year purchase order of military supplies from Camp Crame and Camp Aguinaldo; defendant Rosario was asked to solicit investors who would be paid six (6) percent interest per month on their investment by Mejia and Gidaya; defendant Rosario invested on the said business; when defendant Rosario informed plaintiff and his spouse of the opportunity to invest with Mejia and Gidaya, plaintiff and his spouse were so eager to join and even agreed to only receive four (4) percent interest per month on the investment and give two (2) percent to defendant Rosario as her commission; defendant Rosario did not borrow the amount of Php3,000,000.00 to finance a real estate project because it is hard to believe that a real estate broker like her would develop a certain project with the amount being claimed; defendant Rosario merely acted as intermediary between plaintiff and the real borrowers Mejia and Gidaya; she turned over plaintiff's invested funds to Mejia and Gidaya and defendant Rosario did not use nor appropriate to herself the money being falsely claimed by plaintiff; the transaction between plaintiff and defendant Rosario is not in the nature of a debtor and creditor relationship but that of an investor and broker; and plaintiff voluntarily invested the amount with Mejia and Gidaya.

It was further alleged that: the amount of Php3,000,000.00 as reflected by the checks is not the actual amount because the investment started in the amount of Php50,000.00, then sometimes plaintiff invested Php100,000.00 on a staggered basis; plaintiff included in his computation the interest income of the money previously invested until it reached the amount of Php3,000,000.00; plaintiff and his spouse requested defendant Rosario to issue postdated checks as a guaranty which are not to be deposited since plaintiff and his spouse do not want to accept checks of Gidaya and Mejia; the checks were merely guaranty checks and not for the payment of any contractual obligations with plaintiff; the fact that the said checks became stale and were never deposited proves that defendant Rosario's allegations are true; the controversy came when the payment supposedly to be collected from Camp Crame and Camp Aguinaldo became pending and withheld; Mejia informed defendant Rosario that the interest income of the investors cannot be paid; defendant Rosario informed plaintiff that Mejia and Gidaya could not pay the interest any longer; by reason of the non-payment of the interest income by Mejia and Gidaya, plaintiff demanded payment from defendant Rosario; mainly to buy peace, defendant Rosario was forced to make substantial payments to plaintiff prior to her departure for the USA; defendant Rosario sued Gidaya and Mejia for the advances that she made to plaintiff; her payment consists principally of ceding her rights and ownership over the condominium unit at BSA Twin Towers, Bank Drive, Ortigas Center; defendant Rosario wrote a letter to the Senior Vice President of the realty company concerned to transfer her rights in the name of her daughter defendant Roselle; on 18 April 1997, a Deed of Assignment of Contract to Sell Rights was

executed by defendant Roselle in favor of plaintiff's nominated transferee, their daughter Stephanie Gonzales; defendant Rosario went to the USA not for purposes of avoiding an alleged obligation but to be with her only child who just gave birth; plaintiff is not being truthful when he deliberately omitted the fact that defendant Rosario conveyed the equity on the condominium unit in the amount of Php1,738,827.64; justice and equity demands that they should have deducted this amount from their uncollected claim from Gidaya and Mejia; and plaintiff cannot even present a written contract to prove his claim and all he can present are stale checks issued not in payment of an obligation but rather as mere guaranty.

It was also averred that: TCT No. 279991 in the name of defendant Roselle cannot be questioned in an ordinary civil action such as sum of money because such action is in the nature of a collateral attack against a certificate of title brought under the operation of the Torrens System; there was no bad faith in the transfer of the property to defendant Roselle because the act of transfer was done long before the filing of this case; considering that defendant Roselle is her only child, defendant Rosario transferred the subject property to her as a gift for her wedding on 07 May 2005; it is in derogation of the law and jurisprudence if the plaintiff will be allowed to rescind the Extra-Judicial Settlement of Estate of the late Leoncio Caranay; defendant Roselle was dragged into this case only because, as the only heir, the subject property is now under her name; there was no evidence that defendant Rosario received the letter dated 18 May 2007; without demand, there can be no default; and the case should be dismissed. Defendants counterclaimed for damages, attorney's fees and litigation expenses.

On 23 April 2008, the case was referred to the Philippine Mediation Center for mediation.^[21] Per Mediator's Reports dated 02 May 2008^[22] and 02 June 2008,^[23] the mediation was unsuccessful.

Individual defendants filed a Manifestation^[24] dated 06 June 2008 that they are adopting the Pre-trial Brief that was filed on 03 January 2008. A Pre-Trial Order^[25] dated 18 July 2008 was issued. Plaintiff filed a Motion [For Correction of Pre-Trial Order]^[26] dated 21 August 2008. In an Order^[27] dated 03 December 2008, the Pre-Trial Order was amended and the corrections prayed for were entered.

Trial ensued.

Plaintiff presented Manuel Gonzales,^[28] Yolanda Gonzales^[29] and Brenda Coronado,^[30] as witnesses. On 24 September 2010, plaintiff filed a Motion to Admit^[31] with attached Formal Offer of Evidence.^[32] Individual defendants filed their Comment/Opposition *etc.*^[33] dated 04 October 2010. In an Order^[34] dated 13 December 2010, plaintiff's Formal Offer of Exhibits was admitted.

Individual defendants presented their witnesses, namely, defendant Rosario^[35] and Marcelo L. Tecson.^[36] On 19 April 2013, individual defendants filed their Formal Offer of Evidence,^[37] to which plaintiff filed his Comment/Objections^[38] dated 03 May 2013. In an Order^[39] dated 06 June 2013, Exhibits "1" to " 20" with submarkings were admitted. Individual defendants filed their Memorandum^[40] dated 23 September 2013.