

## THIRTEENTH DIVISION

[ CA-G.R. CV NO. 96013, November 17, 2014 ]

**SPOUSES MELCHOR AND BEVERLY GABUNILAS, PLAINTIFFS-APPELLANTS, VS. SPOUSES HERMINIO AND EDITHA ERORITA AND OR/H & E REALTY CO., DEFENDANTS-APPELLANTS,**

**SPOUSES ANTONIO AND LIWAYWAY PELAYO, DEFENDANTS-APPELLEES.**

### DECISION

**SADANG, J.:**

This is a partial appeal from the Order,<sup>[1]</sup> dated May 3, 2010, of the Regional Trial Court of Parañaque City, Branch 274, which rendered judgment in favor of plaintiffs-appellants and the Order, dated August 10, 2010,<sup>[2]</sup> denying the motion for reconsideration.

Records show that on August 28, 2002, plaintiffs-appellants spouses Melchor and Beverly Gabunilas (hereafter, appellants) filed a case against defendants-appellants spouses Herminio and Editha Erorita (hereafter, spouses Erorita) and/or H & E Realty Co. (H & E) and defendants-appellees Antonio and Liwayway Pelayo (hereafter, spouses Pelayo) for annulment of TCT No. 115885, specific performance and damages before the Regional Trial Court of Paranaque City, Branch 274, docketed as Civil Case No. 02-0353.

In their Complaint,<sup>[3]</sup> appellants alleged that in 1976 they and spouses Erorita entered into a verbal agreement whereby the latter sold to them a 300-square meter lot (Lot No. 8, Block No. 2) located at No. 163 Armstrong Avenue (Phase II), Moonwalk Avenue, Parañaque City for the price of P350,000.00, payable in monthly installments. Later, they remitted various amounts to spouses Erorita and, in 1977, occupied the property as their family residence until they were evicted on August 7, 1998. In May 1984, appellants paid the full purchase price for which official receipt of H & E was issued by Mr. Erorita. They requested the transfer of the property in their names, however, no transfer was made. In September 1997, appellants heard from a former employee of H & E that the title to the property had been transferred to someone else. Confronted by the appellants, the spouses Erorita assured the appellants that the problem would be resolved. Appellants then discovered that the property was transferred in the name of H & E in 1986 under Transfer Certificate of Title (TCT) No. 104692 and mortgaged to Premier Bank for P550,000.00. The mortgage was foreclosed but the property was later redeemed. Based on public records, appellants learned that Herminio and Editha Erorita are the chairman and vice-chairman, respectively, of H & E. They also discovered that the lot was again mortgaged by H & E in favor of spouses Pelayo to secure a P620,000.00 loan. The mortgage was foreclosed and the title to the lot was transferred to the spouses Pelayo as the highest bidders at the auction sale. Consequently, TCT No. 104692

was cancelled and TCT No. 115885 was issued in the names of spouses Pelayo. On December 10, 1997, appellants annotated their adverse claim on the title of the spouses Pelayo.

Appellants further alleged that: the spouses Erorita and/or H & E were not the owners of the property when they mortgaged it and appellants did not consent to the mortgages, and that spouses Erorita and/or H & E Realty Co., Inc. conspired with the spouses Pelayo to defraud them of their property because the mortgages were executed to secure non-existent obligations; the spouses Pelayo knew that the improvements were in appellants' name and that appellants were in possession of the property. They prayed that spouses Erorita be ordered, jointly and severally, to deliver at their expense full title to the lot by executing the appropriate conveyance, that TCT No. 104692 be cancelled and TCT No. 115885 declared null and void, and that all the defendants be ordered to pay, jointly and severally, P1,000,000.00 as moral damages, P500,000.00 as exemplary damages, P500,000.00 as litigation expenses, and attorney's fees and cost of suit.

In their Answer,<sup>[4]</sup> spouses Erorita denied having entered into a sale or mortgage with appellants or received money from them as payment for the property. They alleged that: they merely tolerated appellants' occupation of the property; the receipts are subject to different interpretations; the complaint states no cause of action; a criminal case was filed against them involving the same property and the Metropolitan Trial Court of Parañaque City, Branch 77, decided the case in their favor. They prayed for the dismissal of the case and the payment of P300,000.00 as moral damages.

On June 30, 2004, the lower court issued an Order<sup>[5]</sup> dismissing the case without prejudice for failure to prosecute.

Plaintiffs filed a Motion for Reconsideration<sup>[6]</sup> alleging that they were not able to serve summons on the spouses Pelayo for "lack of address" and sought to serve summons by publication.

On August 18, 2004, the lower court set aside the June 30, 2004 Order and required plaintiffs to file a motion for leave to serve summons by publication which appellants did.

After summons by publication, appellants filed a Motion to Declare Defendants Spouses Antonio and Liwayway Pelayo In Default<sup>[7]</sup> for failure to file responsive pleading which the lower court granted in an Order dated May 18, 2005.

During the pre-trial conference, spouses Erorita and their counsel failed to appear. On motion, the lower court issued an Order on September 13, 2005 allowing reception of evidence ex-parte before the branch clerk of court.

Spouses Erorita filed a Motion for Reconsideration of the September 13, 2005 Order. On March 14, 2006, spouses Pelayos also filed a Motion to Set Aside Order of Default, to Admit Answer, and to Re-open the Case; both motions were denied by the lower court in the Order dated November 8, 2005.

On December 12, 2005, the spouses Eroritas filed a Motion for Clarification of

Orders, inquiring whether they can present evidence but the motion was denied in an Order dated January 6, 2006.

The orders of the lower court were questioned in two petitions for certiorari filed before the Court of Appeals, viz.: 1) CA-GR SP. No. 97351,<sup>[8]</sup> assailing the Orders dated May 18, 2005, July 26, 2006 and October 10, 2006; 2) CA-GR. SP No. 93664,<sup>[9]</sup> assailing the Orders dated September 13, 2005, November 8, 2005 and January 6, 2006. The Court of Appeals, Third and Fourth Divisions, dismissed both petitions and affirmed the assailed orders in the Decisions dated December 22, 2008<sup>[10]</sup> and March 23, 2007.<sup>[11]</sup>

At the *ex parte* hearing, appellants offered their testimonies and documentary exhibits, thus:<sup>[12]</sup> 1) Official Receipt No. 225; 2) handwritten receipt dated July 19, 1993; 3) handwritten receipt dated February 6, 1986; 4) handwritten receipt dated August 5, 1982; 5) handwritten receipt dated August 7, 1983; 6) summary of payment; 7) first computation; 8) TCT No. 115885; 9) TCT No. 104692; 10) Deed of Mortgage dated July 27, 1994; 11) Certification issued by the Municipal Treasurer of Parañaque dated October 11, 1996; 12) Certification issued by the Municipal Treasurer of Parañaque dated July 27, 1994/1995; 13) Articles of Incorporation of H & E Realty Co., Inc.; 14) Certified True Copy of Declaration of Real Property No. E008-03803-Building; 15) Affidavit of Adverse Claim thru Register of Deeds dated December 10, 1997; 16) Contract between Capt. Melchor Gabunilas and his lawyer dated December 10, 1997; 17) Contract between Capt. Gabunilas and his lawyer dated November 21, 1997.

On May 3, 2010, the lower court rendered the assailed Order,<sup>[13]</sup> the *fallo* of which reads:

**WHEREFORE**, in view of the foregoing, judgment is hereby rendered in favor of the plaintiffs and against defendants-spouses Erorita only as follows:

- a. Php. 216,665.00 as indemnity or refund of the actual payment made by the plaintiffs;
- b. Php. 500,000.00 as moral damages;
- c. Php. 250,000.00 as exemplary damages;
- d. Php. 200,000.00 as attorney's fees and litigation expenses;
- e. Costs of suit.

SO ORDERED.

Appellants filed a Motion for Reconsideration<sup>[14]</sup> on the grounds that the lower court failed to uphold their rights as owners of the property over the right of the spouses Pelayo as mortgagees and to consider evidence showing that spouses Pelayo were

not in good faith. The motion was denied in the Order dated August 10, 2010.<sup>[15]</sup>

Appellants<sup>[16]</sup> and spouses Erorita <sup>[17]</sup> filed notices of appeal which were given due course in the Order dated October 21, 2010.<sup>[18]</sup>

In their appeal, appellants raise the following assignment of errors:

- I. THE REGIONAL TRIAL COURT COMMITTED GRAVE ERROR OF FACT AND LAW IN CONCLUDING THAT CERTIFICATE OF TITLE NO. 115885 UNDER THE NAME OF DEFENDANTS-APPELLEES SPOUSES PELAYO COULD NOT BE ANNULLED.
- II. THE REGIONAL TRIAL COURT COMMITTED GRAVE ERROR OF FACT AND LAW IN CONCLUDING THAT DEFENDANTS-APPELLANTS SPOUSES ERORITA COULD NOT BE COMPELLED TO CONVEY THE SUBJECT PROPERTY TO PLAINTIFFS-APPELLANTS.
- III. ASSUMING THAT THE REGIONAL TRIAL COURT WAS CORRECT IN CONCLUDING THAT CERTIFICATE OF TITLE NO. 115885 UNDER THE NAME OF DEFENDANTS-APPELLEES SPOUSES PELAYO COULD NOT BE ANNULLED; AND THAT DEFENDANTS-APPELLANTS SPOUSES ERORITA COULD NOT BE COMPELLED TO CONVEY THE SUBJECT PROPERTY TO PLAINTIFFS-APPELLANTS, THE AWARD OF P216,665.00 AS ACTUAL DAMAGES FAILS TO COMPLY WITH THE LAW.

On their part, spouses Erorita assign these alleged errors:

- I. THE HONORABLE COURT A QUO WITH ALL DUE RESPECT, HAS ERRED IN NOT HOLDING THAT THE PLAINTIFFS-APPELLANTS HAS NO CAUSE OF ACTION AGAINST THE DEFENDANTS-APPELLANTS CONSIDERING THAT THE LATTER CANNOT BE MADE PERSONALY LIABLE SINCE THEY DID NOT ENTER INTO ANY TRANSACTION WITH THE PLAINTIFFS-APPELLANTS IN THEIR PRIVATE CAPACITIES BUT ONLY AS REPRESENTATIVES OF H & E REALTY CO.;
- II. THE HONORABLE COURT A QUO WITH ALL DUE RESPECT, ERRED IN NOT HOLDING THAT PLAINTIFFS-APPELLANTS ACTION FOR ANNULMENT OF TRANSFER CERTIFICATE OF TITLE AGAINST THE DEFENDANTS-APPELLANTS-APPELLEES WAS ALREADY BARRED BY THE STATUTE OF LIMITATIONS;
- III. THE HONORABLE COURT A QUO, WITH ALL DUE RESPECT, ERRED IN AWARDING THE PLAINTIFFS-APPELLANTS UNCONSCIONABLE AMOUNT OF DAMAGES, THE SAME NOT BEING WARRANTED BY LAW AND JURISPRUDENCE, THE EVIDENCES OFFERED AND THE FACTS PROVEN.

**RULING**

The lower court ruled that there being no record of the sale and in view of the admission of plaintiffs that there was only a verbal agreement, the contract is unenforceable. We disagree.

The pertinent provisions of the Civil Code read thus:

Art. 1358. The following must appear in a public document:

(1) Acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property; sales of real property or of an interest therein are governed by Articles 1403, No. 2 and 1405;

x x x      x x x      x x x

Art. 1403. The following contracts are unenforceable, unless they are ratified:

x x x      x x x      x x x

(2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:

x x x      x x x      x x x

(e) An agreement for the leasing for a longer period than one year, or for the sale of real property or of an interest therein; x x x (Underscoring supplied)

Art. 1405. Contracts infringing the Statute of Frauds, referred to in No. 2 of Article 1403, are ratified by the failure to object to the presentation of oral evidence to prove the same, or by the acceptance of benefits under them. (Underscoring supplied)

The purpose of the statute of frauds is to prevent fraud and perjury in the enforcement of obligations depending for their evidence upon the unassisted memory of witnesses by requiring certain enumerated contracts and transactions to be evidenced by a writing signed by the party to be charged.<sup>[19]</sup> A contract that falls under the statute of frauds cannot be proved without the writing or a memorandum thereof.<sup>[20]</sup> The statute of frauds simply provides for the manner of proving the contracts that fall under it. It does not attempt to make such a contract invalid if not executed in writing but only makes ineffective the action for specific performance.<sup>[21]</sup> Thus, oral evidence of the contract will be excluded upon timely objection. However, if no timely objection is made to the oral evidence, the contract shall be