

## TWELFTH DIVISION

[ CA - G.R. CV NO. 64950, August 15, 2006 ]

**MACDONALDO LICLICAN, PLAINTIFF-APPELLANT, VS. HEIRS OF  
MANUEL MAGNO, DEFENDANTS-APPELLEES.**

### D E C I S I O N

**MENDOZA, J.:**

At bar is an appeal from the August 30, 1999 Decision<sup>[1]</sup> of the Regional Trial Court, Branch 21, Manila, a consolidated decision in: (1) **Civil Case No. 94-69096**, an action for Specific Performance, Consignation and Damages filed by Macdonaldo Liclican (*plaintiff-appellant*) against Manuel R. Magno; and (2) **Civil Case No. 94-70530**, an action for Declaration of Nullity of Attachment, Sheriff's Sale of a Family Home and Damages filed by Ronaldo Vasquez against Enriquito A. Violeta, in his capacity as Sheriff IV, RTC Manila, Branch 50, Macdonaldo Liclican, and the Register of Deeds of Manila, the dispositive portion of which states:

"WHEREFORE, premises considered, the Court hereby orders the dismissal of the two (2) cases for lack of merit. The counterclaims of defendants are likewise DISMISSED. Without pronouncement as to costs.

SO ORDERED."<sup>[2]</sup>

The nature of the cases as well as the factual and procedural antecedents appears in the subject decision as follows:

*"It appears that on December 28, 1990, Liclican filed a case against Vasquez for a Sum of Money with prayer for the issuance of writ of preliminary attachment and damages. In said case, wherein the latter acknowledged his indebtedness with Liclican in the sum of P400,000.00, Liclican and Vasquez signed a Compromise Agreement (Exhibit 'A') which was approved by another branch of this Court on September 11, 1991. On March 20, 1992, the Court issued an Order (Exh. 'K') for the issuance of the writ of execution to enforce the judgment. Enriquito Violeta levied the parcel of land covered by TCT No. 186582 (Exh. '1') owned by Vasquez. The levy was annotated in TCT No. 186582 under Entry No. 5848 (Exh. 'A-2-A') on July 29, 1992. The land was subsequently sold at public auction with Liclican as the highest bidder for the sum of P200,000.00.*

*As Vasquez did not redeem the property within the one (1) year redemption from date of registration of the Sheriff's Certificate of Sale, it is now Liclican's contention that title to the land may now be consolidated to him (Liclican) subject to the Real Estate Mortgage (Exh. 'C') executed by Vasquez in favor of Magno, as security to the former loan from the latter in the sum of P275,000.00. The aforesaid mortgage was annotated*

in TCT No. 186582 on May 26, 1989 as Entry No. 1738 (Exh. '1-A). Liclican is willing to pay the amount of P275,000.00 to Magno but was unduly refused insisting that the total mortgage obligation of Vasquez amounted to P1,239,121.00 (Exh. 'E'). Magno in his letter of November 20, 1993, demanded that Liclican remit the said amount, otherwise, he would be constrained to institute foreclosure proceedings.

Liclican failed to remit the said amount. Neither did Vasquez pay his indebtedness to Magno, prompting the latter to initiate the extra-judicial proceedings and public auction sale wherein Magno emerged as the sole and winning bidder. On May 3, 1994, a Certificate of Sale was issued by the Sheriff's Office in favor of Magno for P1,482,461.00 inclusive of interest. The sale was annotated in TCT No. 186582 under Entry No. 6962 (Exh. 'A-2-b') on May 5, 1994. **Liclican now seeks to declare the foreclosure proceedings and the Sheriff's Sale in favor of Magno null and void;** to compel the defendant to accept the amount of P275,000.00 from Liclican; to order Magno to surrender the TCT No. 186582 to Liclican and to order Magno to execute a discharge of Real Estate Mortgage in Civil Case No. 94-69096. During the pendency of the case, Magno died. Pursuant to Sec. 16, Rule 3, of the Revised Rules of Court, he was substituted by his heirs namely: Rogelia, Benjamin, Ramon, Maria, Lourdes and Regino all surnamed Magno.

It is the **contention of Magno** that after the execution of the Real Estate Mortgage executed by Spouses Vasquez in his favor, the former secured additional loan from him (Magno) with the undertaking that the existing real estate mortgage shall also secure the additional loan amounting to P1,239,121.00. As mortgagee, he holds a preferred lien over the property and can not be divested of his lien over the property as registered mortgagee, that the tender of payment did not constitute a valid tender of payment because it did not satisfy the essential requirements of a legal tender of payment; that the Court has no jurisdiction over the subject matter of the case as he had already foreclosed the mortgage extra-judicially in order to satisfy the mortgage credit against the lot covered by TCT No. 186582.

**Civil Case No. 94-70530 was filed by Vasquez against Liclican, Violeta as Sheriff of RTC Branch 50, Manila and Register of Deeds Manila** with prayer for the cancellation of the attachment of and annotation of the Certificate of Sale and Final Deed of Sale issued by Violeta in favor of Liclican and to declare the land exempt from execution with damages; that on account of the illegal arbitrary and unjustified levy and execution sale of plaintiff's house and lot, he is claiming for moral damages in the sum of P60,000.00; P50,000.00 exemplary damages, attorney's fees of P30,000.00 and P10,000.00 litigation expenses, plus costs of the suit.

In the **answer** with counterclaim and Special/Alternative defenses, defendants **Violeta and Liclican moved for the dismissal of the complaint** and alleged that plaintiff Vasquez has no cause of action against defendants; that the Court has no jurisdiction to amend and/or modify final orders and judgment of a co-equal court; that the house

constructed on the lot covered by TCT No. 186582 was not legally constituted as a family home of the plaintiff; that plaintiff has, by laches, waived in law and equity the provisions of Art. 155 of the Family Code; that plaintiff is estopped to question the writs of attachment and execution on TCT No. 186582, for his failure to reasonably question and raise objections to the final order and writ issued by the RTC, Branch 50, Manila; that plaintiff Vasquez voluntarily agreed to secure his undertaking and obligation under the compromise agreement which was the subject of attachment issued in the said case. Defendants posted a counterclaim in the sum of P100,000.00 as and for attorney's fees and P25,000.00 as litigation expenses.<sup>[3]</sup>

On August 30, 1999, the trial court rendered the challenged decision. Pertinently, the said decision reads:

*"In **Civil Case No. 94-69096**, when defendant Magno had the real estate mortgage annotated at TCT No. 186582, it became a lien inseparable from the mortgaged property. It is right in rem effective against third persons. Until discharged, it follows the property. All subsequent purchases of the property, therefore, must respect the mortgage whether the transfer to them be with or without the consent of the mortgagee. (PNB vs. Mallorca 21 SCRA 694).*

*The Court rejects Liclican's contention that Magno acted in gross bad faith when he (Magno) foreclosed the mortgage upon filing of his Complaint against the other because he was already warned in the letter of November 20, 1993 (Exh. 'E') addressed to his (Liclican) lawyer that unless he tender payment of the full amount of his (Magno's) claim, foreclosure proceedings would be instituted which he did.*

*The foreclosure of the mortgage initiated by Magno as mortgagor is an exercise of his right in case of non-payment of debt secured by the mortgage pursuant to the following ruling of the Supreme Court:*

*'The only right of a mortgagee in case of non-payment of a debt secured by a mortgage would be to foreclose the mortgage and have the encumbered property sold to satisfy the outstanding indebtedness. (Guanzon vs. Angel, 33 SCRA 474).'*

*The Court therefore pronounces no recourse of Annulment of Foreclosure proceedings and Sheriff's Sale in favor of defendant Magno and neither any award for damages.*

*In **Civil Case No. 94-7053**, as plaintiff Vasquez did not present evidence to prove his allegations in the complaint, the Court has no other recourse but to dismiss the same."*

Not in conformity with the above decision, plaintiff-appellant Macdonaldo Liclican interposed the instant appeal presenting the following---

### **"ASSIGNMENT OF ERRORS**

1. The Lower Court erred in not finding that the Plaintiff-Appellant MACDONALDO LICLICAN, as Junior Encumbrancer of TCT 186582 is entitled to discharge the Real Estate Mortgage for the sum of P275,000.00 under the express terms and conditions of the Real Estate Mortgage dated 25 May 1989, and in not ordering Defendant MANUEL MAGNO or his heirs to accept the said amount of P275,000.00 to discharge his Real Estate Mortgage;

11. The Lower Court erred in not finding that MANUEL MAGNO has failed to show and prove by sufficient evidence that the P1,239,121.00 is secured by the Real Estate Mortgage, or that it is the legal and actual sum owed to him by Rodolfo Vasquez secured by Mortgage;

111. The Lower Court erred in not finding and in not ordering that the Foreclosure Sale by MANUEL MAGNO of TCT 186582 is NULL AND VOID, the consideration and amount of the sale being in excess and unreasonably over the actual and legal sum secured by the Real Estate Mortgage.”<sup>[4]</sup>

Did the RTC err in dismissing *Civil Case No. 94-69096*, an action for Specific Performance, Consignation and Damages filed by Macdonaldo Liclican (*plaintiff-appellant*) against Manuel R. Magno (*defendant-appellee*)?

We resolve the issue in the negative.

Plaintiff-appellant’s position clashes with principles well-entrenched in law and jurisprudence.

Preliminarily, plaintiff-appellant insists that since the Real Estate Mortgage<sup>[5]</sup> did not stipulate as to the interest, he is bound to pay only P275,000.00, the amount reflected on the Real Mortgage Contract.<sup>[6]</sup>

*We do not agree.* Plaintiff-appellant, may have forgotten the fact that a Real Estate Mortgage executed on May 24, 1989 then by spouses Vasquez in favor of Magno is merely an accessory contract covering the security of their loan with Magno amounting to P275,000.00. The principal contract is the Promissory Note dated May 24, 1989.<sup>[7]</sup> It is not correct to say, therefore, that the basis of the liability of spouses Vasquez’s (*now plaintiff-appellant’s*) is that amount reflected on the Real Estate Mortgage only.

The said Promissory Note, in part, provides:

#### **“PROMISSORY NOTE**

P275,000.00

For value received, we promise to pay MANUEL R. MAGNO, or Order, the sum of TWO HUNDRED SEVENTY FIVE THOUSAND PESOS (**P275,000.00**), Philippine Currency, on or before **June 24, 1989**.

Should we fail to pay this obligation in full when due, we agree to pay