

## SECOND DIVISION

[ G.R. No. 170745, January 30, 2009 ]

**GERARDA A. DIZON-ABILLA AND THE HEIRS OF RONALDO P. ABILLA, PETITIONERS, VS. SPS. CARLOS AND THERESITA GOBONSENG, RESPONDENTS.**

### DECISION

#### CARPIO MORALES, J.:

Spouses Carlos and Theresita Gobonseng (respondents) failed to settle a P550,000 loan obtained from Gerarda A. Dizon-Abilla and the Heirs of Ronaldo P. Abilla (petitioners). The parties eventually agreed on a settlement scheme. Thus, respondents executed a Deed of Sale<sup>[1]</sup> covering seventeen (17) lots in favor of petitioners, and a separate document affording respondents the option to buy back the lots within six months from execution of the Deed of Sale.

As respondents failed to exercise their option, petitioners filed a case for specific performance and recovery of sum of money and damages before the Dumaguete City Regional Trial Court (RTC), docketed as Civil Case No. 8184, to *inter alia*, recoup the expenses attendant to the "preparation and registration" of the Deed of Sale.

By Decision of October 29, 1990, Branch 33 of the Dumaguete RTC declared the Option to Buy null and void. It, however, rendered judgment in favor of the vendees-herein petitioners respecting their prayer for, *inter alia*, damages, disposing as follows:

1. Ordering defendants to pay plaintiffs [herein petitioners] the sum of P171, 483.40 representing the total expenses incurred by plaintiffs in the preparation and registration of the Deed of Sale, amount paid to (Insular) Bank of Asia and America (IBAA) and capital gains tax with legal rate of interest from the time the same was incurred by plaintiffs up to the time payment is made by defendants; P10,000.00 as attorney's fees; P15,000.00 moral damages; P10,000.00 expenses of litigation and to pay cost.
2. The Philippine National Bank, Dumaguete City Branch is directed to release in favor of plaintiffs, the spouses Ronaldo P. Abilla and Gerald A. Dizon all the money deposited with said bank, representing the rentals of a residential house erected inside in one of the lots in question;
3. For insufficiency of evidence, defendants' counterclaim is ordered dismissed.

SO ORDERED. (Underscoring supplied)

The Court of Appeals, holding that "the deed of sale and option to buy actually constitute a *pacto de retro* sale," affirmed the trial court's decision but deleted the award of attorney's fees.

Nineteen (19) days after the appellate court's Decision became final on February 8, 1999 and entered in the Book of Entries of Judgments or on February 27, 1999, respondents filed before the trial court an "Urgent

Motion to Repurchase" the lots based on Article 1606<sup>[2]</sup> of the Civil Code in which they manifested tender of payment via deposit with RCBC Dumaguete Branch, details of which are as follows<sup>[3]</sup>:

Account No.	1-428-32592-2
Account Name	Carlos Ang Gobonseng Jr. and Theresita Mimie Ong ITF Ronaldo P. Abilla & Gerarda A. Dizon (Under Civil Case No. 8184)
Passbook Serial No.	022233
Date of Deposit	February 23, 1991 [ <i>sic</i> ]
Amount	P1,003,290.87

By Order of November 10, 1999, the trial court denied respondents' motion. The trial judge later inhibited himself from the proceedings and the case was re-raffled to Branch 41 presided by Judge Araceli Alafriz who set aside the said Order of November 10, 1999 and allowed respondents to repurchase the lots.

Judge Alafriz thus authorized the release to petitioners of the RCBC deposit. Out of the P1,003,290.87 deposit, only the amount of P896,000 was released by the bank, however, as it retained the balance of P107,290.87 in settlement of petitioners' alleged unpaid loan obligation.

Before this Court, petitioners, *via* petition for review on certiorari in G.R. No. 146651, challenged the trial court's order allowing respondents to repurchase the lots. By Resolution of August 6, 2002, this Court decided in respondents' favor, holding that there was a belief on their part as vendors that their agreement with petitioners was in reality a mortgage.

. . . [T]he applicability of Article 1606 [of the Civil Code (on Conventional Redemption)] rests on the *bona fide* intent of the vendor *a retro*, i.e. respondent in this case. If he honestly believed that the transaction was an equitable mortgage, the said article applies and he can still repurchase the property within thirty days from finality of judgment declaring the transaction as sale with *pacto de retro*. Parenthetically, it matters not what the vendee intended the transaction to be. x x x

These circumstances, peculiar to the case at bar, make this case fall squarely within the situation contemplated in the above-quoted doctrine - that **there was a belief on the part of the vendor *a retro*, founded on facts attendant upon the execution of the sale with *pacto de retro*, honestly and sincerely entertained, that the agreement was in reality a mortgage**, one not intended to affect the title to the property ostensibly sold, but merely to give it as security for a loan or other obligation. x x x