

FIRST DIVISION

[G.R. No. 157040, February 12, 2008]

JERRYCO C. RIVERA, Petitioner, vs. HON. COURT OF APPEALS, SPS. JOSE N. PINEDA and CORAZON PINEDA, Respondents.

DECISION

AZCUNA, J.:

This is a petition for review under Rule 45 of the Revised Rules on Civil Procedure challenging the July 20, 2001 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CV No. 51089, which reversed and set aside the August 23, 1995 Decision^[2] of the Regional Trial Court of Quezon City, Branch 82, and the January 27, 2003 Resolution^[3] denying reconsideration thereof.

On August 25, 1990, private respondents spouses Jose and Corazon Pineda (Spouses Pineda) filed a Complaint for Rescission of Contract, Recovery of Possession and Collection of Rent or Sum of Money against petitioner Jerryco C. Rivera (Rivera). The Complaint alleged that on September 11, 1986 Spouses Pineda and Rivera entered into a contract whereby, in consideration of P400,000, the former mortgaged in favor of the latter a 412.30-sq. m. residential lot located at No. 62 Congressional Road, Barangay Bahay Toro, Quezon City, covered by TCT No. 146291. Moreover, stated in the "Deed of Mortgage with Irrevocable Option to Buy"^[4] was the right granted to Rivera to exercise the option to buy the mortgaged property for the sum of P900,000, by paying the additional amount of P500,000, without interest, in accordance with the following schedule of payment:

(1) November 9, 1986	P83,333.35
(2) February 15, 1987	83,333.35
(3) April 15, 1987	83,333.35
(4) June 15, 1987	83,333.35
(5) August 15, 1987	83,333.35
(6) October 15, 1987	83,333.35

Upon execution of the contract, Rivera took possession of the subject property and the owner's duplicate copy of the title over the lot. He was able to pay the first three installments. As to the June 15, 1987 installment, he paid the amount of P30,000 in cash on May 16, 1987 and P55,000 in check on its due date. The check, however, bounced and was replaced with cash only on August 21, 1987. Thereafter, Rivera never settled the fifth and sixth installments.

Pursuant to a provision in the Deed,^[5] Spouses Pineda, through counsel, gave notice^[6] to Rivera rescinding the contract and tendering the amount of P400,000 which represents the mortgage indebtedness. As the demand was unheeded, they litigated.

In his Answer with Counterclaim,^[7] Rivera asserted that Spouses Pineda have no cause of action as he had already paid the last two installments due on August 15, 1987 and October 15, 1987. In fact, he allegedly overpaid them in the amount of P79,999.70; hence, he should be reimbursed and an absolute deed of sale must be executed in his favor. Assuming that he was in default, Rivera contended that Spouses Pineda did not make a valid tender of payment of their indebtedness, or even if one was made, they have failed to avail of the legal remedy of consignation. Supposing further that he did not really exercise his option to purchase the subject property, Rivera countered that the mortgage, in effect, remains valid and subsisting due to the failure of Spouses Pineda to pay him P400,000 on October 15, 1987, the deadline stated in the Deed, thus, entitling him to foreclose the property. Lastly, even if Spouses Pineda have valid

grounds to ask for the rescission of the Deed, Rivera averred that they are still obliged to return everything they have received by virtue of the contract, including the estimated amount of P400,000 which he spent for the improvements introduced on the property.

Rivera thus prayed:

WHEREFORE, it is respectfully prayed that the complaint be dismissed and plaintiffs be ordered to pay defendant P79,999.70 and execute an absolute deed of sale in defendant's favor to transfer full ownership of the property in question or, in the alternative, in the event that defendant be found to be in default, that the property mortgaged be judicially foreclosed and the additional payments by defendant be ordered returned to him by plaintiffs and, in either case, that plaintiffs be ordered to pay defendant, jointly and severally, the following:

- a. P100,000.00 - moral damages;
- b. P100,000.00 - exemplary damages;
- c. P30,000.00 - attorney's fees plus P800.00 per Court appearance; and
- d. The costs of suit.

Other reliefs, just and equitable under the premises, are likewise prayed for.^[8]

During the trial, Rivera principally relied on the cash voucher dated June 15, 1987^[9] to prove his contention that he has fully paid for the subject property. Said voucher states:

CASH VOUCHER

No. _____
Date June 15, 1987

Paid to Mr. Jose N. Pineda & Mrs. Corazon Pineda
Address # 61 Zodiac St. Bel Air, Makati, M.M.

R.C. No. _____ Date Issued _____ Issued At _____

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PARTICULARS

AMOUNT

Payment for Notary Public document # 245 page No. 49, Book No. 15, Series of 1986 of Atty. Josias K. Guinto between Jerryco C. Rivera & Mr. Jose N. Pineda	
Cash on hand.	P245,000.00
.	
Metro Bank check # 099408 . . .	<u>P 55,000.00</u>
.	
	TOTAL P300,000.00

PAID BY:	DATE	Received from <u>Jerryco C. Rivera</u> the amount of PESOS <u>Three</u> <u>hundred thousand pesos</u> only (<u>P300,000.00</u>) in full payment of amount described above.
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APPROVED BY: _____
(sgd)

By: Corazon A. Pineda (sgd.)^[10]

On its face, the voucher shows the signature of Corazon Pineda confirming her receipt from Emilio Rivera, petitioner's father, of the total amount of P300,000 - P245,000 in cash and P55,000 in Metrobank check - representing the settlement for the last three installments due. Spouses Pineda, however, denied having received the P245,000 cash, reasoning that the mode of payment was always in the form of a check and that they had accepted only the Metrobank check but acknowledged the same in a different voucher. Further, they disputed the genuineness and due

execution of the voucher, noting that the signature of Corazon Pineda was forged and that even if such was not the case, the typewritten entries therein were merely intercalated after it was signed to make it appear that Rivera already paid in full.

Upon separate motions filed by Spouses Pineda,^[11] the questioned voucher was submitted for technical examination to the National Bureau of Investigation (NBI), which later on submitted its findings declaring that the signature of Corazon Pineda in the voucher was not forged since her questioned and standard signatures were written by one and the same person.^[12] It concluded, however, that the typewritten entries "Cash on hand . . . P245,000.00," "300,000.00," "Three hundred thousand pesos only," and "300,000.00" were added/intercalated entries.^[13]

On August 23, 1995, the trial court rendered its Decision^[14] dismissing the case:

WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the herein Complaint and ordering the plaintiffs to execute an absolute sale of the property herein involved in favor of the defendant, sufficient in form and substance to transfer full ownership thereof to him. FURTHER, the plaintiffs are hereby ordered to pay to the defendant the following: P100,000.00 as moral and exemplary damages; P20,000.00 as attorney's fees, plus P800.00 per court appearance; and the costs.

SO ORDERED.^[15]

Despite the arguments posed by Spouses Pineda, the trial court gave more credence to the NBI reports as well as to the testimonies of Rivera's witnesses when it ruled:

The plaintiffs, however, deny having received the cash of P245,000.00 but admit receiving the P55,000.00 which they claim to be receipted under a different voucher. Upon their own instance, the plaintiffs were authorized by this Court to submit Exhibit "L" (also Exh. "6" for the defendant) to the Questioned Documents Division of the National Bureau of Investigation (NBI) for examination and analysis by its handwriting experts to determine if the signature of plaintiff Corazon Pineda therein is genuine or is a forgery, considering that the plaintiffs denied issuing said voucher. Unfortunately for the plaintiffs, the NBI findings were to the effect [that] the signature of the said plaintiff on the questioned voucher was really hers, and this was confirmed on the witness stand by NBI Senior Examiner Emmanuel de Guzman.

Not to be easily discouraged, plaintiffs' counsel tried to salvage [their] case by calling attention to a supposed intercalation indicated by a [misalignment] of certain words in the voucher and succeeded in eliciting testimony from Senior Examiner de Guzman that this could have been deliberate or caused by a defect in the [typewriter] used and that there was no way of determining if the entries were made before or after the execution of the document. The defendant thus presented Daisy Lazaro who testified that she was present when the questioned document was typed in the former office of Lucio Lazaro at 156 K-9 St., Kamias, Quezon City and that an old TM-Olympia [typewriter] was used which had a defective cylinder and, as such, the words typed were not aligned, as in the case of the words "Cash on Hand" thereon.

This Court finds this explanation more worthy of belief and acceptance, especially considering that plaintiffs' assertion that intercalations were made on the document after the same was signed by plaintiff Corazon Pineda came late and contradicts their original stand that the signature thereon was a forgery. Certainly it would defy logic to indulge in a mere supposition or probability without any evidence to support it. Unless clearly overthrown by ample evidence, the presumption that the signed document contains all the terms agreed upon will continue to prevail. And so this Court holds.

Moreover, the due execution and genuineness of Exhibit "L" was confirmed by plaintiffs' own witness, Emilio [Rivera], whose testimony has been adopted by the defendant (his son) as part of the evidence for the defense. Admittedly, this witness had been the one making payments to the plaintiffs and he testified that there has been full payment of

the amounts scheduled in the "Deed of Mortgage with Irrevocable Option to Buy". As a clear indication of his honesty and forthrightness, he even admitted that the overpayment his son claims in fact represents penalty for delayed payments.^[16]

Spouses Pineda filed a Notice of Appeal on September 25, 1995.^[17] They submitted the Appellants' Brief on October 28, 1996 after three consecutive motions for extension of time to file the same, which were all granted.^[18] Rivera, however, filed his Appellee's Brief only on April 11, 1997, eight days following the resolution of the CA submitting the case for decision.^[19] For the late filing, the appellee's brief was ordered expunged from the records per Resolution of the CA^[20] dated May 9, 1997.

The CA ruled in favor of Spouses Pineda. The dispositive portion of its Decision^[21] dated July 20, 2001 states:

WHEREFORE, premises considered, the judgment appealed from is hereby **REVERSED** and **SET ASIDE**, and a new one is hereby rendered as follows:

- 1.) The Deed of Mortgage with Irrevocable Option to Buy is hereby declared rescinded and with no further force and effect;
- 2.) Defendant-appellee is ordered to restore plaintiffs-appellants to the possession of the property in question and to return Transfer Certificate of Title No. 146291 covering the said property and its improvements;
- 3.) Defendant-appellee is ordered to pay plaintiffs-appellants the following:
 - a.) Rental fee of P10,000.00 per month starting from August 16, 1987 plus legal interest;
 - b.) Exemplary damages in the amount of P20,000.00;
 - c.) Attorney's fees of P20,000.00, plus P500.00 appearance fee per hearing attended by counsel; and
 - d.) Costs of suit;
- 4.) The amount of P83,333.35 is declared forfeited in favor of plaintiffs-appellants as agreed upon; and
- 5.) Plaintiffs-appellants are directed to reimburse defendant-appellee the total amount of P650,000.00 representing the P400,000.00 downpayment and 75% of the paid installments from November 9, 1986 to June 15, 1987 in the amount of P250,000.05.

SO ORDERED.^[22]

The CA differed with the findings of the trial court that there was full payment made on June 15, 1987 and that the alleged overpayment refers to payment of penalty charges due on the delayed installment payment. It held:

We agree with plaintiff-appellant Corazon Pineda. As of June 15, 1987, the remaining amount due from defendant-appellee was merely P250,000.05 consisting of three installments due on June 15, 1987, August 15, 1987 and October 15, 1987 at P83,333.35 each. Considering that there was an advance payment made on May 16, 1987 in the amount of P30,000.00, the balance would have been merely P220,000.05.

The defendant-appellee[,] however[,] claimed to have paid the amount of P300,000.00 as shown in the voucher in question thereby resulting to an alleged overpayment of P79,999.95 which defendant-appellee's father Emilio Rivera claimed to be payment for

the penalty charges incurred by defendant-appellee x x x.

The rate of penalty charge for late payment of installment was 14% per annum x x x. Said penalty would have applied to the remaining unpaid amount of P53,333.35 for the installment due on June 15, 1987 considering that an advance payment of P30,000.00 was made on May 16, 1987. If there was indeed payment of penalty charges, the amount would have been merely P1,370.59 or $P53,333.35 \times 14\% \times 67/365$ x x x.

There can be no penalty charges for the installments due on August 15, 1987 and October 15, 1987 since they were allegedly paid on June 15, 1987, and were therefore, advance payments, if indeed made.

However, if there was indeed full payment made on June 15, 1987, there would have been no need for the defendant-appellee to redeem the dishonored check and to pay plaintiffs-appellants the amount of P55,000.00 on August 21, 1987.

The Decision of the CA became final and executory as no appeal or motion for reconsideration was filed by either party. Hence, on August 18, 2001,^[23] an Entry of Judgment was issued by the CA.

Almost a year after, on August 9, 2002, Rivera, through a new counsel, Melecio Virgilio Emata Law Offices, filed an Omnibus Motion to Set Aside Entry of Judgment and to Admit Motion for Reconsideration.^[24]

Rivera alleged that he was belatedly notified that his counsel of record, Atty. Bernardo T. Dominguez of Madrid Cacho Dominguez and Associates Law Offices, died on April 13, 1994; hence, he had no choice but to personally prepare and file his Appellee's Brief, which was ordered expunged from the records. Moreover, he claimed that it was only on July 23, 2002 that he obtained a copy of the Entry of Judgment, without first receiving the Notice of Judgment prior thereto. Rivera averred that there is nothing in the said Notice that would indicate that he actually received a copy of the CA Decision since the envelope addressed to him containing the judgment was returned unserved by the postmaster. In view of these factors, he asserted that the CA Decision has not yet become final and executory.

The CA, however, resolved to deny the omnibus motion on January 27, 2003,^[25] thus:

- a.) While it is true that Atty. Bernardo T. Dominguez, counsel of record for appellee, died of cerebral hemorrhage, this did not deprive appellee of sufficient representation since said counsel was a partner in a law firm. Hence, the appellee's brief should have been prepared and reasonably filed by the firm's other partner who could have taken over the case.
- b.) Appellee cannot argue that he was not notified of the Decision dated July 20, 2001 since it was sent by registered mail and was returned unserved after three (3) postal notices. Section 10 of Rule 13 of the 1997 Revised Rules on Civil Procedure states in part that: [S]ervice by registered mail is complete upon actual receipt by the addressee, or after five (5) days from the date he received the first notice of the postmaster..." Therefore, service of said Notice is deemed complete.
- c.) New counsel has not filed a Notice of Appearance and therefore has no personality to question the proceedings in this case.^[26]

Hence, this petition.

Relevant for our consideration are the following alleged errors of the CA: