

## THIRD DIVISION

[ G.R. No. 173002, July 04, 2008 ]

**BENJAMIN BAUTISTA, PETITIONER, VS. SHIRLEY G. UNANGST  
AND OTHER UNKNOWN PERSONS, RESPONDENTS.**

### DECISION

**REYES, R.T., J.:**

THE presumption of equitable mortgage imposes a burden on the buyer to present clear evidence to rebut it. He must overthrow it, lest it persist.<sup>[1]</sup> To overturn that *prima facie* presumption, the buyer needs to adduce substantial and credible evidence to prove that the contract was a bona fide deed of sale with right to repurchase.

This petition for review on *certiorari* impugns the Decision<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 85942<sup>[3]</sup> which reversed and set aside that<sup>[4]</sup> of the Regional Trial Court (RTC) in an action for specific performance or recovery of possession, for sum of money, for consolidation of ownerships and damages.

#### The Facts

On November 15, 1996, Hamilton Salak rented a car from GAB Rent-A-Car, a car rental shop owned by petitioner Benjamin Bautista. The lease was for three (3) consecutive days at a rental fee of P1,000.00 per day.<sup>[5]</sup> However, Salak failed to return the car after three (3) days prompting petitioner to file a complaint against him for *estafa*, violation of Batas Pambansa Blg. 22 and carnapping.<sup>[6]</sup>

On February 2, 1997, Salak and his common-law wife, respondent Shirley G. Unangst, were arrested by officers of the Criminal Investigation Service Group (CISG) of the Philippine National Police while riding the rented car along Quezon City. The next day, petitioner demanded from Salak at the CISG Office the sum of P232,372.00 as payment for car rental fees, fees incurred in locating the car, attorney's fees, capital gains tax, transfer tax, and other incidental expenses.<sup>[7]</sup>

Salak and respondent expressed willingness to pay but since they were then short on cash, Salak proposed to sell to petitioner a house and lot titled in the name of respondent. Petitioner welcomed the proposal after consulting his wife, Cynthia. Cynthia, on the other hand, further agreed to pay the mortgage loan of respondent over the subject property to a certain Jojo Lee in the amount of P295,000.00 as the property was then set to be publicly auctioned on February 17, 1997.<sup>[8]</sup>

To formalize their amicable settlement, Cynthia, Salak and respondent executed a written agreement.<sup>[9]</sup> They stipulated that respondent would sell, subject to repurchase, her residential property in favor of Cynthia for the total amount of

P527,372.00 broken down, as follows: (1) P295,000.00 for the amount paid by Cynthia to Lee to release the mortgage on the property; and (2) P232,372.00, which is the amount due to GAB Rent-A-Car. Cynthia also agreed to desist from pursuing the complaint against Salak and respondent.<sup>[10]</sup>

Respondent and petitioner also executed a separate deed of sale with right to repurchase,<sup>[11]</sup> specifying, among others, that: (1) respondent, as vendor, shall pay capital gains tax, current real estate taxes and utility bills pertaining to the property; (2) if respondent fails to repurchase the property within 30 days from the date of the deed, she and her assigns shall immediately vacate the premises and deliver its possession to petitioner without need of a judicial order; and (3) respondent's refusal to do so will entitle petitioner to take immediate possession of the property.<sup>[12]</sup>

Respondent failed to repurchase the property within the stipulated period. As a result, petitioner filed, on June 5, 1998, a complaint for specific performance or recovery of possession, for sum of money, for consolidation of ownership and damages against respondent and other unnamed persons before the RTC of Olongapo City.

In his complaint,<sup>[13]</sup> petitioner alleged, among others, that after respondent failed to repurchase the subject realty, he caused the registration of the deed of sale with the Register of Deeds and the transfer of the tax declarations in his name; that respondent failed to pay the capital gains taxes and update the real estate taxes forcing him to pay said amounts in the sum of P71,129.05 and P11,993.72, respectively; and that respondent violated the terms of the deed when she, as well as the other unnamed persons, refused to vacate the subject property despite repeated demands.<sup>[14]</sup>

Petitioner prayed before the RTC that an order be issued in his favor directing respondents to: (1) surrender the possession of the property; (2) pay P150,000.00 for the reasonable compensation for its use from March 7, 1997 to June 7, 1998, plus P10,000.00 per month afterward; (3) pay the amount advanced by petitioner, to wit: P71,129.05 and P11,993.72 for the payment of capital gains tax and real estate taxes, respectively; and P70,000.00 for attorney's fees.<sup>[15]</sup>

On June 16, 1998, petitioner filed an amended complaint,<sup>[16]</sup> reiterating his previous allegations but with the added prayer for consolidation of ownership pursuant to Article 1607 of the Civil Code.<sup>[17]</sup>

On the other hand, respondents controverted the allegations in the complaint and averred in their Answer,<sup>[18]</sup> among others, that plaintiff had no cause of action inasmuch as respondent Unangst signed the subject deed of sale under duress and intimidation employed by petitioner and his cohorts; that, assuming that her consent was freely given, the contract of sale was simulated and fictitious since the vendor never received the stipulated consideration; that the sale should be construed as an equitable mortgage pursuant to Articles 1602 and 1604 of the Civil Code because of its onerous conditions and shockingly low consideration; that their indebtedness in the form of arrears in car rentals merely amounts to P90,000.00; and that the instant action was premature as plaintiff had not yet consolidated

ownership over the property. Defendants counterclaimed for moral damages in the amount of P500,000.00 and attorney's fees in the amount of P50,000.00, plus P500.00 per appearance.<sup>[19]</sup>

On July 29, 2004, after due proceedings, the RTC rendered a decision in favor of petitioner, disposing as follows:

WHEREFORE, judgment is rendered finding the Deed of Sale with Right to Repurchase (Exh. "C") as, indeed, a document of sale executed by the defendant in favor of the plaintiff covering the parcel of land house (*sic*) situated at Lot 3-B, Blk. 10, Waterdam Road, Gordon Heights, Olongapo City, declared under Tax Declaration Nos. 004-7756R and 7757R (Exhs. "I" and "I-1"). The defendant and any person taking rights from her is (*sic*) ordered to immediately vacate from the place and turn over its possession to the plaintiff. They are likewise directed not to remove any part of the building on the lot.

The ownership of the said property is properly consolidated in the name of the plaintiff.

The defendant is further ordered to pay to the plaintiff the amount of P10,000.00 a month from March 7, 1997 up to the time possession of the lot and house is restored to the plaintiff representing the reasonable value for the use of the property; the amount of P71,129.05 representing the payment made by the plaintiff on the capital gain taxes and the further amount of P70,000.00 for attorney's fees and the costs of suit.

SO ORDERED.<sup>[20]</sup>

Respondents failed to interpose a timely appeal. However, on September 10, 2004, respondent Unangst filed a petition for relief pursuant to Section 38 of the 1997 Rules on Civil Procedure. She argued that she learned of the decision of the RTC only on September 6, 2004 when she received a copy of the motion for execution filed by petitioner.<sup>[21]</sup>

Petitioner, on the other hand, moved for the dismissal of respondent's petition on the ground that the latter paid an insufficient sum of P200.00 as docket fees.<sup>[22]</sup>

It appears that respondent Unangst initially paid P200.00 as docket fees as this was the amount assessed by the Clerk of Court of the RTC.<sup>[23]</sup> Said amount was insufficient as the proper filing fees amount to P1,715.00. Nevertheless, the correct amount was subsequently paid by said respondent on February 22, 2005.<sup>[24]</sup>

In their comment,<sup>[25]</sup> respondents countered that they should not be faulted for paying deficient docket fees as it was due to an erroneous assessment of the Clerk of Court.<sup>[26]</sup>

The RTC granted the petition for relief. Subsequently, it directed respondents to file a notice of appeal within twenty-four (24) hours from receipt of the order.<sup>[27]</sup> Accordingly, on February 23, 2005, respondents filed their notice of appeal.<sup>[28]</sup>

Respondents contended before the CA that the RTC erred in: (1) not annulling the deed of sale with right to repurchase; (2) declaring that the deed of sale with right to repurchase is a real contract of sale; (3) ordering the consolidation of ownership of the subject property in the name of petitioner.<sup>[29]</sup> They argued that respondent Unangst's consent to the deed of sale with right to repurchase was procured under duress and that even assuming that her consent was freely given, the contract partakes of the nature of an equitable mortgage.<sup>[30]</sup>

On the other hand, petitioner insisted, among others, that although the petition for relief of respondents was filed on time, the proper filing fees for said petition were paid beyond the 60-day reglementary period. He posited that jurisdiction is acquired by the court over the action only upon full payment of prescribed docket fees.<sup>[31]</sup>

### **CA Disposition**

In a Decision<sup>[32]</sup> dated April 7, 2006, the CA reversed and set aside the RTC judgment.<sup>[33]</sup> The dispositive part of the appellate court's decision reads, thus:

IN VIEW OF ALL THE FOREGOING, the instant appeal is hereby GRANTED, the challenged Decision dated July 29, 2004 hereby (*sic*) REVERSED and SET ASIDE, and a new one entered declaring the Deed of Sale With Right Of Repurchase dated February 4, 1997 as an equitable mortgage. No cost.

SO ORDERED.<sup>[34]</sup>

The CA declared that the Deed of Sale with Right of Repurchase executed by the parties was an equitable mortgage. On the procedural aspect pertaining to the petition for relief filed by respondent Unangst, the CA ruled that "the trial court, in opting to apply the rules liberally, cannot be faulted for giving due course to the questioned petition for relief which enabled appellants to interpose the instant appeal."<sup>[35]</sup> It ratiocinated:

Appellee recognizes the timely filing of appellants' petition for relief to be able to appeal judgment but nonetheless points out that the proper filing fees were paid beyond the 60-day reglementary period. Arguing that the court acquires jurisdiction over the action only upon full payment of the prescribed docket fees, he submits that the trial court erred in granting appellants' petition for relief despite the late payment of the filing fees.

While this Court is fully aware of the mandatory nature of the requirement of payment of appellate docket fee, the High Court has recognized that its strict application is qualified by the following: first, failure to pay those fees within the reglementary period allows only discretionary, not automatic, dismissal; second, such power should be used by the court in conjunction with its exercise of sound discretion in accordance with the tenets of justice and fair play, as well as with a great deal of circumspection in consideration of all attendant circumstances (*Meatmasters International Corporation v. Lelis Integrated Development Corporation*, 452 SCRA 626 [2005], citing *La Salette College v. Pilotin*,

418 SCRA 380 [2003]).

Applied in the instant case, the docket fees were admittedly paid only on February 22, 2005, or a little less than two (2) months after the period for filing the petition lapsed. Yet, this matter was sufficiently explained by appellants. The records bear out that appellants initially paid P200.00 as docket fees because this was the amount assessed by the Clerk of Court of the RTC of Olongapo City (p. 273, Records). As it turned out, the fees paid was insufficient, the proper filing fees being P1,715.00, which was eventually paid by appellants on February 1, 2005 (p. 296, Records). As such, appellants cannot be faulted for their failure to pay the proper docket fees for, given the prevailing circumstances, such failure was clearly not a dilatory tactic nor intended to circumvent the Rules of Court. On the contrary, appellants demonstrated their willingness to pay the docket fees when they subsequently paid on the same day they were assessed the correct fees (p. 299, Records). Notably, in *Yambao v. Court of Appeals* (346 SCRA 141 [2000]), the High Court declared therein that "the appellate court may extend the time for the payment of the docket fees if appellants is able to show that there is a justifiable reason for his failure to pay the correct amount of docket fees within the prescribed period, like fraud, accident, mistake, excusable negligence, or a similar supervening casualty, without fault on the part of appellant." Verily, the trial court, in opting to apply the rules liberally, cannot be faulted for giving due course to the questioned petition for relief which enabled appellants to interpose the instant appeal.<sup>[36]</sup>

On the substantial issues, the CA concluded that "While the records is bereft of any proof or evidence that appellee employed unlawful or improper pressure against appellant Unangst to give her consent to the contract of sale, there is, nevertheless, sufficient basis to hold the subject contract as one of equitable mortgage."<sup>[37]</sup> It explained:

Jurisprudence has consistently held that the nomenclature used by the contracting parties to describe a contract does not determine its nature. The decisive factor in determining the true nature of the transaction between the parties is the intent of the parties, as shown not necessarily by the terminology used in the contract but by all the surrounding circumstances, such as the relative situations of the parties at that time; the attitudes, acts, conduct, and declarations of the parties; the negotiations between them leading to the deed; and generally, all pertinent facts having a tendency to fix and determine the real nature of their design and understanding (*Legaspi v. Ong*, 459 SCRA 122 [2005]).

It must be stressed, however, that there is no conclusive test to determine whether a deed absolute on its face is really a simple loan accommodation secured by a mortgage. In fact, it is often a question difficult to resolve and is frequently made to depend on the surrounding circumstances of each case. When in doubt, courts are generally inclined to construe a transaction purporting to be a sale as an equitable mortgage, which involves a lesser transmission of rights and interests over the property in controversy (*Legaspi*, *ibid.*).