

## THIRD DIVISION

[ G.R. NO. 161304, July 27, 2007 ]

**SPOUSES ARTURO CONDES AND NORA CONDES, PETITIONERS,  
VS. THE HONORABLE COURT OF APPEALS AND DR. PACIFICO A.  
DISTURA, RESPONDENTS.**

### D E C I S I O N

**NACHURA, J.:**

This is a petition for review of the Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 76927, dated August 28, 2003, which granted the petition for *certiorari* filed by respondent from the trial court's order denying the respondent's demurrer to evidence. Likewise assailed in this petition is the CA Resolution dated November 21, 2003, denying the motion for reconsideration of the assailed decision.

The antecedents of the case are as follows:

On September 21, 1995, the petitioners, spouses Arturo and Nora Condes, filed a Complaint for annulment of deed of sale or declaration thereof as an equitable mortgage, cancellation of Transfer Certificate of Title (TCT) No. T-110767, and the restoration of TCT No. T-78260 with damages. According to the petitioners, they are the registered owners of a parcel of land with an area of 684 sq. m., covered by TCT No. T-78260. To release the property from a mortgage with a certain Bernan Certeza, they allegedly re-mortgaged the property to respondent, Dr. Pacifico Distura, through their attorney-in-fact, Josephine Condes-Jover, on April 26, 1995 for the sum of ₱665,504.81 (₱572,296.58 at 5% interest per month for three months, plus ₱3,000.00, attorney's fees). They averred that, contrary to what was agreed upon, Josephine was made to sign a deed of sale instead of a mortgage contract.

The petitioners further narrated that on June 7, 1995, the respondent and their attorney-in-fact executed an Agreement of Option to Repurchase<sup>[2]</sup> the property giving the petitioners until August 26, 1995 within which to pay the loan. They, however, failed to pay on the said date and pleaded with the respondent for additional time. The latter agreed and told them to raise the amount of ₱665,504.81, plus 5% interest for one month or ₱33,275.24, for a total of ₱698,780.05. They were allegedly able to raise the amount of ₱665,504.81 on September 4, 1995, and they expressed willingness to pay the additional interest due but the respondent told them that he will only sell back the property for ₱1 million. The petitioners averred that they found out later that the respondent had the Deed of Sale notarized on June 7, 1995 by Notary Public Joenel Alipao, without the presence of Josephine. They posited that to evade payment of the right amount of taxes, the respondent executed another falsified Deed of Sale dated August 29, 1995, wherein he misrepresented that the consideration was only ₱68,000.00. As a result, the respondent succeeded in obtaining a new title, TCT No. T-110767, in his

name. The petitioners averred that the last time they contacted the respondent, the latter was willing to sell back the property for ₱1,070,678.78.

The petitioners prayed that the Deed of Sale dated April 26, 1995 be declared as an equitable mortgage; the Deed of Sale dated August 29, 1995 be declared a forgery; and moral and exemplary damages be paid to them, plus attorney's fees and litigation expenses.

In his Answer with Counterclaim,<sup>[3]</sup> the respondent contended that the petitioners sold the property to him on the condition that they will be given a right to repurchase the property for a period of one month; thus, he executed the Agreement of Option to Repurchase. He asserted that when the petitioners failed to repurchase the property, he insisted that the certificate of title be transferred to his name. The petitioners allegedly agreed provided that the consideration appearing in the deed of sale be reduced to ₱250,000.00 so that they can save on the payment of taxes. He said that he found out later on that there was another deed of sale for ₱68,400.00 registered in the Registry of Deeds.

After pre-trial, the petitioners, as plaintiffs, presented their witnesses. Josephine Condes-Jover testified that she offered to transfer the mortgage on the petitioners' property to the respondent for ₱665,504.81; that the respondent agreed and made her sign a deed of sale; that she wondered why she was made to sign a deed of sale when their understanding was that the property will only be mortgaged; that she trusted him because they were close, and the latter assured him that the property will be redeemed in the future;<sup>[4]</sup> and that she did not appear before a notary public for the acknowledgment of the said deed of sale.<sup>[5]</sup>

Petitioner Nora Condes likewise testified that she only agreed to transfer the mortgage on the property, not to sell the same to the respondent; the latter agreed and gave her three months within which to pay the mortgage and an additional one month as grace period.<sup>[6]</sup> She narrated that when the loan was about to become due, she arranged to sell the property to a certain Dr. Latañafrancia for ₱1.2 million<sup>[7]</sup> but the respondent and his wife asked her to let them buy the property for ₱1 million.<sup>[8]</sup> After consulting with her husband, she agreed to sell the property to the respondent only to be told that he needed more time because his buyer was still in Manila. They were surprised because they thought the respondent himself would buy the property. They waited for more than two weeks, but the respondent told them later that his prospective buyer was not interested anymore. He then offered to buy the property for ₱300,000.00 but she refused. The respondent told her then that the property was already his and that they have no right over it anymore. His statement made her anxious, and so she went to the Registry of Deeds to verify the condition of their title and was relieved to learn that it was still intact.<sup>[9]</sup>

Petitioner Arturo Condes corroborated his wife's testimony that the agreement was only to mortgage the property. He added that he obtained from the Registry of Deeds a copy of the Deed of Sale which resulted in the transfer of their title. He identified the same as the Deed of Sale dated August 29, 1995 showing that the consideration was ₱68,400.00. He confronted Josephine with the said document, and the latter denied executing the deed.<sup>[10]</sup>

The petitioners also employed the services of Col. Pedro Elvas, Jr., a practicing Questioned Documents Examiner, who testified that based on his examination, the signature of Josephine Condes-Jover appearing in the Deed of Definite Sale dated August 29, 1995 is a forgery.

The trial court admitted the documentary evidence offered by the petitioners,<sup>[11]</sup> which consisted of the following:

Exh. B – Certified machine copy of the Deed of Sale dated August 29, 1995 for the amount of P68,400.00 allegedly executed by Josephine Condes-Jover in favor of Dr. Pacifico Distura, notarized by Florecita Gelvezon;

Exh. C – Certified machine copy of TCT No. T-110767 registered in the name of Dr. Pacifico Distura;

Exh. F – Machine copy of the Special Power of Attorney dated May 3, 1995;

Exh. G – Bio-data of Col. Pedro S. Elvas, Jr., alleged handwriting expert;

Exh. H – Certificate of Achievement of Col. Pedro S. Elvas, Jr. by the Department of State, Agency of International Development of the Government of the United States of America dated November 19, 1964;

Exh. I – Questioned Document Report No. 17-0997 dated October 3, 1997;

Exh. J – Certified machine copy of Deed of Sale dated August 29, 1995 containing the marking of the questioned signatures of Josephine Condes-Jover;

Exh. K – Machine copy of the letter of plaintiff Arturo Condes addressed to the Register of Deeds of Iloilo City;

Exh. L – Comparison Chart of the enlarged photographs of the questioned signatures of Josephine Condes-Jover and the standard specimen signatures;

Exh. M – St. Joseph Grade School Progress Report Card of Von Jovi Jover for school year 1994-95 with signatures of Josephine Condes- Jover;

Exh. N – Official Receipt of driver's license dated August 16, 1995 with signature of Josephine Condes-Jover;

Exh. O – Sworn Statement of Josephine Condes-Jover dated September 25, 1995 with her signatures;

Exhs. P and P-1 – Two (2) Sworn Statements of Josephine Condes-Jover dated January 23, 1996 with her signatures;

Exh. Q – Community Tax Certificate of Josephine Condes-Jover dated

February 13, 1997 with her signature;

Exh. R – COMELEC VRR No. 03395358 dated June 22, 1997 with the signature of Josephine Condes-Jover;

Exh. S – Plain sheet of bond paper with the specimen signatures Josephine Condes-Jover;

Exh. T – Certified machine copy of TCT No. T-78260 registered in the name of the plaintiffs;

Exh. V and V-1 – Medical Certificate of plaintiff Nora Condes with the signature of attending physician dated September 25, 1995;

Exh. W and W1 – Medical Certificate of plaintiff Nora Condes with the signature of attending physician dated September 27, 1995;

Exh. X – Certified machine copy of Official Receipt No. 059880 issued by the City Treasurer of Iloilo City;

Exh. Y – Authority to accept payment under Nos. 2580033, 2361465 and 2361466 for the sale of P68,400.00 dated August 30, 1995;

Exh. Z – Capital Gains Tax Return on the sale for P68,400.00;

Exh. AA – BIR Certificate No. 774924;

Exh. EE – Primary Entry Book;

Exh. FF – Releasing Book of Title;

Thereafter, the petitioners rested their case.

On November 29, 2002, the respondent filed a Demurrer to Evidence<sup>[12]</sup> on the ground that the petitioners had not proven their claims by a preponderance of evidence. He contended that the petitioners' evidence contradict their claims considering that the Deed of Definite Sale dated August 29, 1995 notarized by Florecita Gelvezon, which they claimed as a forgery, was not the one used in the transfer of the certificate of title in his name. He pointed out that Exhibit "T," TCT No. 78260, shows that it was cancelled by virtue of a Deed of Sale dated August 28, 1995, for the sum of P68,000.00 executed by Josephine Jover and acknowledged before Notary Public Joenel T. Alipao,<sup>[13]</sup> not Notary Public Florecita Gelvezon. Hence, even if the said Deed of Definite Sale dated August 29, 1995 is declared as void, it would not affect the transfer of title to his name.

On January 9, 2003, the Regional Trial Court (RTC) of Iloilo City, Branch 36, issued the Order<sup>[14]</sup> denying the demurrer to evidence on the ground that some of the petitioners' claims could be supported by their evidence and will prevail in the absence of controverting evidence. On January 28, 2003, the trial court reiterated its previous ruling and denied the respondent's motion for reconsideration.

Unconvinced, the respondent filed a petition for *certiorari* with the CA. He succeeded in obtaining a favorable decision when the CA rendered its decision on August 28, 2003, the dispositive portion of which states:

WHEREFORE, the instant petition is hereby GRANTED and GIVEN DUE COURSE. The Orders, dated January 9, 2003 and January 29, 2003, are hereby REVERSED and SET ASIDE. The instant complaint in Civil Case No. 22566 pending before the Regional Trial Court of Iloilo City, Branch 36, is hereby DISMISSED.

SO ORDERED.<sup>[15]</sup>

The petitioners moved for the reconsideration of the CA's decision, but the CA denied the same on November 21, 2003.<sup>[16]</sup> Consequently, they filed a petition for review, wherein the petitioners raise the following issues:

- I. THE RESPONDENT HONORABLE COURT OF APPEALS FAILED TO RESOLVE ALL THE ISSUES IN CIVIL CASE NO. 22566 BASED ON THE EVIDENCE, TESTIMONIAL AND DOCUMENTARY, PRESENTED BY THE PETITIONERS IN THE TRIAL COURT, FOREMOST OF WHICH IS THE ISSUE ON EQUITABLE MORTGAGE;
- II. THE PETITION FOR CERTIORARI UNDER RULE 65 OF RESPONDENT DR. DISTURA IS INSUFFICIENT IN FORM AND IN SUBSTANCE BECAUSE IT FAILED AND OMITTED TO PRESENT TO THE RESPONDENT HONORABLE COURT OF APPEALS ALL THE EVIDENCE TESTIMONIAL AND DOCUMENTARY, PRESENTED BY THE PETITIONERS IN THE TRIAL COURT, WHICH WOULD HAVE BEEN MADE AS BASIS BY THE RESPONDENT HONORABLE COURT OF APPEALS IN DETERMINING WHETHER OR NOT THE TRIAL JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION IN DENYING RESPONDENT'S DR. DISTURA'S DEMURRER TO EVIDENCE;
- III. THE PETITIONERS HAVE PROVEN BY PREPONDERANCE OF EVIDENCE ALL THEIR CAUSES OF ACTION AS WELL AS ALL THE ISSUES AGREED BY THE PARTIES IN CIVIL CASE NO. 22566 BY THEIR EVIDENCE, TESTIMONIAL AND DOCUMENTARY;
- IV. THE PETITIONERS' CAUSES OF ACTION ARE NOT ANCHORED ONLY ON THE FORGED DEED OF SALE, OR ON ITS USE IN THE TRANSFER OF THE TITLE TO THE PROPERTY FROM THE PETITIONERS TO RESPONDENT DR. DISTURA, BUT ON OTHER EVIDENCE, TESTIMONIAL AND DOCUMENTARY, AS WELL AS ON THE JUDICIAL ADMISSION OF THE LATTER.<sup>[17]</sup>

Briefly, the issues posed by the petitioners are as follows: (a) whether the CA erred when it failed to resolve all the issues in its decision granting the demurrer to evidence considering that such a decision is in effect an adjudication on the merits; (b) whether the petition for *certiorari* before the CA should have been dismissed for being defective in form; and (c) whether the CA erred in granting the demurrer to evidence.