

SECOND DIVISION

[G.R. NO. 152347, June 21, 2006]

**UNION BANK OF THE PHILIPPINES, PETITIONER, VS. SPS.
ALFREDO ONG AND SUSANA ONG AND JACKSON LEE,
RESPONDENTS.**

DECISION

GARCIA, J.:

By this petition for review under Rule 45 of the Rules of Court, petitioner Union Bank of the Philippines (Union Bank) seeks to set aside the decision^[1] dated December 5, 2001 of the Court of Appeals (CA) in *CA-G.R. No. 66030* reversing an earlier decision of the Regional Trial Court (RTC) of Pasig City in Civil Case No. 61601, a suit thereat commenced by the petitioner against the herein respondents for annulment or rescission of sale in fraud of creditors.

The facts:

Herein respondents, the spouses Alfredo Ong and Susana Ong, own the majority capital stock of Baliwag Mahogany Corporation (BMC). On October 10, 1990, the spouses executed a *Continuing Surety Agreement* in favor of Union Bank to secure a P40,000,000.00-credit line facility made available to BMC. The agreement expressly stipulated a solidary liability undertaking.

On October 22, 1991, or about a year after the execution of the surety agreement, the spouses Ong, for P12,500,000.00, sold their 974-square meter lot located in Greenhills, San Juan, Metro Manila, together with the house and other improvements standing thereon, to their co-respondent, Jackson Lee (Lee, for short). The following day, Lee registered the sale and was then issued Transfer Certificate of Title (TCT) No. 4746-R. At about this time, BMC had already availed itself of the credit facilities, and had in fact executed a total of twenty-two (22) promissory notes in favor of Union Bank.

On November 22, 1991, BMC filed a *Petition for Rehabilitation and for Declaration of Suspension of Payments* with the Securities and Exchange Commission (SEC). To protect its interest, Union Bank lost no time in filing with the RTC of Pasig City an action for rescission of the sale between the spouses Ong and Jackson Lee for purportedly being in fraud of creditors.

In its complaint, docketed as Civil Case No. 61601 and eventually raffled to Branch 157 of the court, Union Bank assailed the validity of the sale, alleging that the spouses Ong and Lee entered into the transaction in question for the lone purpose of fraudulently removing the property from the reach of Union Bank and other creditors. The fraudulent design, according to Union Bank, is evidenced by the following circumstances: (1) insufficiency of consideration, the purchase price of

P12,500,000.00 being below the fair market value of the subject property at that time; (2) lack of financial capacity on the part of Lee to buy the property at that time since his gross income for the year 1990, per the credit investigation conducted by the bank, amounted to only P346,571.73; and (3) Lee did not assert absolute ownership over the property as he allowed the spouses Ong to retain possession thereof under a purported Contract of Lease dated October 29, 1991.

Answering, herein respondents, as defendants *a quo*, maintained, in the main, that both contracts of sale and lease over the Greenhills property were founded on good and valid consideration and executed in good faith. They also scored Union Bank for forum shopping, alleging that the latter is one of the participating creditors in BMC's petition for rehabilitation.

Issues having been joined, trial followed. On September 27, 1999, the trial court, applying Article 1381 of the Civil Code and noting that the evidence on record "present[s] a holistic combination of circumstances distinctly characterized by badges of fraud," rendered judgment for Union Bank, the Deed of Sale executed on October 22, 1991 by the spouses Ong in favor of Lee being declared null and void.

Foremost of the circumstances adverted to relates to the execution of the sale against the backdrop of the spouses Ong, as owners of 70% of BMC's stocks, knowing of the company's insolvency. This knowledge was the reason why, according to the court, the spouses Ong disposed of the subject property leaving the bank without recourse to recover BMC's indebtedness. The trial court also made reference to the circumstances which Union Bank mentioned in its complaint as indicia of conveyance in fraud of creditors.

Therefrom, herein respondents interposed an appeal to the CA which docketed their recourse as *CA-G.R. No. 66030*.

In its Decision dated December 5, 2001, the CA reversed and set aside the trial court's ruling, observing that the contract of sale executed by the spouses Ong and Lee, being complete and regular on its face, is clothed with the *prima facie* presumption of regularity and legality. Plodding on, the appellate court said:

In order that rescission of a contract made in fraud of creditors may be decreed, it is necessary that the complaining creditors must prove that they cannot recover in any other manner what is due them. xxx.

There is no gainsaying that the basis of liability of the appellant spouses in their personal capacity to Union Bank is the Continuing Surety Agreement they have signed ... on October 10, 1990. However, the real debtor of Union Bank is BMC, which has a separate juridical personality from appellants Ong. Granting that BMC was already insolvent at the time of the sale, still, there was no showing that at the time BMC filed a petition for suspension of payment that appellants Ong were themselves bankrupt. In the case at bench, no attempt was made by Union Bank, not even a feeble or half-hearted one, to establish that appellants spouses have no other property from which Union Bank, as creditor of BMC, could obtain payment. While appellants Ong may be independently liable directly to Union Bank under the Continuing Surety Agreement, all that Union Bank tried to prove was that BMC was insolvent at the time of the

questioned sale. No competent evidence was adduced showing that appellants Ong had no leviable assets other than the subject property that would justify challenge to the transaction.^[2]

Petitioner moved for a reconsideration of the above decision but its motion was denied by the appellate court in its resolution of February 21, 2002.^[3]

Hence, petitioner's present recourse on its submission that the appellate court erred:

- I. xxx WHEN IT CONSIDERED THAT THE SALE TRANSACTION BETWEEN [RESPONDENTS SPOUSES ONG AND LEE] ENJOYS THE PRESUMPTION OF REGULARITY AND LEGALITY AS THERE EXISTS ALSO A PRESUMPTION THAT THE SAID SALE WAS ENTERED IN FRAUD OF CREDITORS. PETITIONER THEREFORE NEED NOT PROVE THAT RESPONDENTS SPOUSES ONG DID NOT LEAVE SUFFICIENT ASSETS TO PAY THEIR CREDITORS. BUT EVEN THEN, PETITIONER HAS PROVEN THAT THE SPOUSES HAVE NO OTHER ASSETS.
- II. IN CONCLUDING, ASSUMING EX-GRATIA ARGUMENTI THAT THE SALE BETWEEN DEFENDANT-APPELLANTS ENJOY THE PRESUMPTION OF REGULARITY AND LEGALITY, THAT THE EVIDENCE ADDUCED BY THE PETITIONER ... WAS NOT SUFFICIENT TO OVERCOME THE PRESUMPTION.
- III. xxx IN FINDING THAT IT WAS [RESPONDENT] LEE WHO HAS SUFFICIENTLY PROVEN THAT THERE WAS A VALID AND SUFFICIENT CONSIDERATION FOR THE SALE.
- IV. xxx IN NOT FINDING THAT JACKSON LEE WAS IN BAD FAITH WHEN HE PURCHASED THE PROPERTY.^[4]

Petitioner maintains, citing *China Banking Corporation vs. Court of Appeals*,^[5] that the sale in question, having been entered in fraud of creditor, is rescissible. In the same breath, however, petitioner would fault the CA for failing to consider that the sale between the Ongs and Lee is presumed fraudulent under Section 70 of Act No. 1956, as amended, or the *Insolvency Law*. Elaborating on this point, petitioner states that the subject sale occurred thirty (30) days prior to the filing by BMC of a petition for suspension of payment before the SEC, thus rendering the sale not merely rescissible but absolutely void.

We resolve to deny the petition.

In effect, the determinative issue tendered in this case resolves itself into the question of whether or not the Ong-Lee contract of sale partakes of a conveyance to defraud Union Bank. Obviously, this necessitates an inquiry into the facts and this Court eschews factual examination in a petition for review under Rule 45 of the Rules of Court, save when, as in the instant case, a clash between the factual findings of the trial court and that of the appellate court exists,^[6] among other exceptions.

As between the contrasting positions of the trial court and the CA, that of the

latter commends itself for adoption, being more in accord with the evidence on hand and the laws applicable thereto.

Essentially, petitioner anchors its case on Article 1381 of the Civil Code which lists as among the rescissible contracts "[T]hose undertaken in fraud of creditors when the latter cannot in any other manner collect the claim due them."

Contracts in fraud of creditors are those executed with the intention to prejudice the rights of creditors. They should not be confused with those entered into without such mal-intent, even if, as a direct consequence thereof, the creditor may suffer some damage. In determining whether or not a certain conveying contract is fraudulent, what comes to mind first is the question of whether the conveyance was a *bona fide* transaction or a trick and contrivance to defeat creditors.^[7] To creditors seeking contract rescission on the ground of fraudulent conveyance rest the onus of proving by competent evidence the existence of such fraudulent intent on the part of the debtor, albeit they may fall back on the disputable presumptions, if proper, established under Article 1387 of the Code.^[8]

In the present case, respondent spouses Ong, as the CA had determined, had sufficiently established the validity and legitimacy of the sale in question. The conveying deed, a duly notarized document, carries with it the presumption of validity and regularity. Too, the sale was duly recorded and annotated on the title of the property owners, the spouses Ong. As the transferee of said property, respondent Lee caused the transfer of title to his name.

There can be no quibbling about the transaction being supported by a valid and sufficient consideration. Respondent Lee's account, while on the witness box, about this angle of the sale was categorical and straightforward. An excerpt of his testimony:

Atty. De Jesus :

Before you prepared the consideration of this formal offer, as standard operating procedure of buy and sell, what documents were prepared?

xxx xxx xxx

Jackson Lee:

A. There is a downpayment.

Q. And how much was the downpayment?

A. P2,500,000.00.

Q. Was that downpayment covered by a receipt signed by the seller?

A. Yes, Sir, P500,000.00 and P2,000,000.00

xxx xxx xxx

Q. Are you referring to the receipt dated October 19, 1991, how about the other receipt dated October 21, 1991?

A. Yes, Sir, this is the same receipt.

xxx xxx xxx

Q. Considering that the consideration of this document is for P12,000,000.00 and you made mention only of P2,500,000.00, covered by the receipts, do you have evidence to show that, finally, Susana Ong received the balance of P10,000,000.00?

A. Yes, Sir.

Q. Showing to you a receipt denominated as Acknowledgement Receipt, dated October 25, 1991, are you referring to this receipt to cover the balance of P10,000,000.00?

A. Yes, sir.^[9]

The foregoing testimony readily proves that money indeed changed hands in connection with the sale of the subject property. Respondent Lee, as purchaser, paid the stipulated contract price to the spouses Ong, as vendors. Receipts presented in evidence covered and proved such payment. Accordingly, any suggestion negating payment and receipt of valuable consideration for the subject conveyance, or worse, that the sale was fictitious must simply be rejected.

In a bid to attach a badge of fraud on the transaction, petitioner raises the issue of inadequate consideration, alleging in this regard that only P12,500,000.00 was paid for property having, during the period material, a fair market value of P14,500,000.00.

We do not agree.

The existence of fraud or the intent to defraud creditors cannot plausibly be presumed from the fact that the price paid for a piece of real estate is perceived to be slightly lower, if that really be the case, than its market value. To be sure, it is logical, even expected, for contracting minds, each having an interest to protect, to negotiate on the price and other conditions before closing a sale of a valuable piece of land. The negotiating areas could cover various items. The purchase price, while undeniably an important consideration, is doubtless only one of them. Thus, a scenario where the price actually stipulated may, as a matter of fact, be lower than the original asking price of the vendor or the fair market value of the property, as what perhaps happened in the instant case, is not out of the ordinary, let alone indicative of fraudulent intention. That the spouses Ong acquiesced to the price of P12,500,000.00, which may be lower than the market value of the house and lot at the time of alienation, is certainly not an unusual business phenomenon.

Lest it be overlooked, the disparity between the price appearing in the conveying deed and what the petitioner regarded as the real value of the property is not as gross to support a conclusion of fraud. What is more, one Oliver Morales, a licensed real estate appraiser and broker, virtually made short shrift of petitioner's claim of gross inadequacy of the purchase price. Mr. Morales declared that there exists no