

## SECOND DIVISION

**[ G.R. No. 147259, November 24, 2003 ]**

**RICARDO ALCANTARA, PETITIONER, VS. HON. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### DECISION

**CALLEJO, SR., J.:**

This is a petition for review on *certiorari* of the Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 21068 affirming *in toto* the decision of the Regional Trial Court of Makati City, Branch 62, in Criminal Cases Nos. 90-5020 and 90-5023.<sup>[2]</sup>

Carlita was intending to sell a parcel of land she owned located in the Bel-Air Subdivision, Barangay Merville, Makati, Metro Manila, covered by Transfer Certificate of Title No. 158630 and her house constructed thereon for P22,000,000. Sometime during the first week of September 1990, Peter Dy Lee arrived in her boutique (jewelry shop) located at the ABC Building, Guadalupe, Makati City. Lee told Carlita that he was under the employ of Virgilio Tulalian, the President of Junior Express, Inc., and Ricardo Alcantara, the Vice-President for Operations of said corporation. As his employers were in the import and export business, Lee proposed that garments made by his employers be produced for her shop. In the course of the conversation, Carlita mentioned that she wanted to sell her property.

About the second week of September 1990, Alcantara and Tulalian arrived in the shop and told Carlita that they wanted to order garments from her. Tulalian also told her that his company, the Junior Express, Inc., was interested to buy her property. Tulalian then asked Carlita to lend to him P3,000,000 to facilitate the approval and release of his loan in Singapore in the amount of US\$2,000,000.<sup>[3]</sup> Tulalian proposed to repay the loan and to pay for the property from the proceeds of the loan from Singapore, within a period of sixty days. Tulalian also offered to draw and deliver to Carlita a postdated check of P3,000,000, to guarantee the payment of the loan. Additionally, Tulalian and Alcantara also offered a parcel of land owned by Alcantara as collateral. The property was located in Binangonan, Rizal, covered by Original Certificate of Title (OCT) No. M-5410, issued on August 22, 1989 based on a free patent executed on December 21, 1988. Carlita replied that she would discuss their proposals with her lawyer.

In the meantime, Carlita inquired from Dr. Gorgonio Reyes, Alcantara's *compadre*, if the latter was a reliable person. Dr. Reyes told her that Alcantara was a former schoolmate of his, and assured her that he was a good person. Sgt. Honorato Glean, a Makati policeman, Alcantara and Carlita inspected Alcantara's property and made inquiries from the Bureau of Lands/Register of Deeds as to its ownership. Carlita and Sgt. Glean were able to confirm that indeed Alcantara and his wife Teresita were the registered owners of the property.<sup>[4]</sup> Carlita finally agreed to lend P3,000,000 to Tulalian. She then borrowed the amount from Inocencio Carag and mortgaged her

Bel-Air property to guarantee the payment thereof.

On November 5, 1990, Carlita, Tulalian and Alcantara executed a Contract of Conditional Deed of Sale<sup>[5]</sup> where they agreed that (a) Tulalian would purchase Carlita's property for P22,000,000; (b) until payment of the purchase price, Carlita would remain the owner of the property and would be entitled to its possession; (c) Carlita and Tulalian shall then form a partnership after a deed of absolute sale shall have been executed in favor of Tulalian, and the property shall then be used for a garment factory; (d) Tulalian shall pay the purchase price of the property with the proceeds of his approved loan from abroad; (e) the loan of P3,000,000 was granted to Tulalian with interest of 10% per month; (f) the purchase price of the property as well as Tulalian's P3,000,000 loan shall be paid within a period of sixty days from the proceeds of Tulalian's approved loan from Singapore; (g) to insure the payment of the said loan and purchase price of Carlita's property, Alcantara shall execute a deed of assignment in her favor over his Binangonan property.<sup>[6]</sup>

On the same date, Alcantara, with the marital consent of his wife Teresita, executed a deed of assignment of title of real estate property<sup>[7]</sup> in favor of Carlita in which he mortgaged the Binangonan property covered by OCT No. M-5410 as collateral to guarantee the said transaction. It was also covenanted that upon Tulalian's failure to pay the P3,000,000 loan within sixty days from the date thereof, Carlita shall have the right to "exercise the right and attributes of ownership over the property." Tulalian and Jose Bartolata signed the deed as witnesses. Alcantara turned over the owner's duplicate of OCT No. M-5410 over the property. She had the deed of assignment annotated, and delivered the same to Alcantara and his wife Teresita the amount of P3,000,000; P2,000,000 in cash, and P1,000,000 in the form of a check. Tulalian and Bartolata drew and delivered to Carlita Check No. 07034049 in the amount of P3,000,000, postdated November 30, 1990 and drawn against the account of Junior Express, Inc. in the International Corporate Bank<sup>[8]</sup> as guarantee for the payment of Tulalian's loan in the amount of P3,000,000.<sup>[9]</sup> When Carlita inquired from the drawee Bank if the depositor had sufficient funds in the said account to answer for the amount of the check, she was told that the check was drawn against insufficient funds but that the drawee was expecting some remittances from Singapore. Tulalian and Bartolata also drew Check No. 07034050 postdated November 30, 1990 in the amount of P5,000,000,<sup>[10]</sup> and Check No. 07034051 postdated December 20, 1990 in the amount of P5,500,000,<sup>[11]</sup> each drawn against Junior Express, Inc.'s account with the said bank in favor of Carlita, in partial payment of the purchase price of her property.

Subsequently, Tulalian and Bartolata went to Singapore to follow up Tulalian's loan. Carlita followed suit. However, the transaction broke down and failed. Consequently, Tulalian failed to pay the loan as well as the purchase price of Carlita's property. Despite repeated demands by Carlita made in the company of Sgt. Glean and Dr. Reyes, Tulalian, Bartolata and Alcantara failed to pay. Alcantara asked Carlita to be more patient and not to deposit the checks, as he was waiting for Tulalian and Bartolata to return from Singapore.

When the obligations remained unpaid, Carlita presented the checks to the drawee bank on January 11, 1991. The checks were dishonored by the drawee bank for the reason that the checks were drawn against insufficient funds. As of January 11,

1991, the balance in the account of Junior Express, Inc. was only P205,100.15.<sup>[12]</sup> Because of Tulalian and Alcantara's failure to pay the P3,000,000 loan, Inocencio Carag charged Carlita with violation of Batas Pambansa Blg. 22 in the RTC of Quezon City.<sup>[13]</sup>

On June 4, 1991, Carlita received a letter from Atty. Rafael Mateo, counsel of Jaime Alcantara. She was informed that Jaime was a brother of Ricardo and Romulo Alcantara, and that the property covered by OCT No. M-5410 was owned not only by Ricardo Alcantara but also by Jaime Alcantara and their brother Romulo. Furthermore, Carlita was told that the property had already been the subject of a partition and approved Subdivision Plan No. Psa-229122 in the name of Juana Aramil; that the brothers Romulo and Jaime Alcantara never received a part of Tulalian's P3,000,000 loan; and that Ricardo Alcantara had no authority to assign or mortgage the said property to Carlita. Finally, Jaime Alcantara demanded that she surrender the owner's duplicate of the said title within ten days.<sup>[14]</sup> Carlita failed to comply.<sup>[15]</sup>

On June 15, 1991, Giovanni Diestro and Jaime Alcantara, represented by Romulo Alcantara, filed a civil complaint against Carlita and the Spouses Ricardo and Teresita B. Alcantara with the RTC of Binangonan, Rizal, for reconveyance and/or partition with damages and specific performance. The plaintiffs therein alleged *inter alia* that the plaintiffs Jaime and Romulo Alcantara and the defendant Ricardo Alcantara were co-owners of the property: the plaintiff Jaime Alcantara owned an undivided one-half of the property; the one-fourth undivided portion was owned by the defendant Ricardo Alcantara; and the other undivided one-fourth portion was owned by Romulo Alcantara. It was further alleged that Ricardo Alcantara, through fraud, was able to secure a free patent over the entire property in his name;<sup>[16]</sup> and that the deed of conditional sale executed by Ricardo Alcantara in Carlita's favor was null and void insofar as his undivided share was concerned, being contrary to Section 118 of Commonwealth Act 141, as amended.<sup>[17]</sup>

The plaintiffs therein prayed that, after due proceedings, judgment be rendered in their favor, thus:

1. As against defendant spouses, to reconvey to plaintiffs Giovanni Diestro and Jaime Alcantara their share, rights, interest and participation in the property covered by Original Certificate of Title No. M-5410 only to the extent of  $\frac{1}{4}$  and  $\frac{1}{2}$ , respectively;
2. As against defendant Marcantonio, to deliver duplicate owner's copy of Original Certificate of Title No. M-5410 to herein plaintiff, the assigned being null and void;
3. To pay actual damages of P100,000.00;
4. To pay exemplary damages of P100,000.00;
5. To pay moral damages of no less than P100,000.00;
6. To reimburse plaintiff attorney's fee of P300,000.00 plus P1,000.00 for every court appearance;

7. To compensate cost of suit and other expenses of litigation;[18]

Appended to the complaint was a waiver executed by Ricardo and his wife Teresita on June 4, 1991. The waiver contained the following: that Juana Aramil executed a deed of absolute sale over three parcels of land covered by Tax Declaration Nos. 15-0179, 15-0180 and 15-0181 on June 26, 1979, in favor of his brothers Romulo and Jaime Alcantara in the following proportions: Ricardo Alcantara -  $\frac{1}{4}$  undivided portion; Jaime Alcantara -  $\frac{1}{2}$  undivided portion; Romulo Alcantara -  $\frac{1}{4}$  undivided portion; that he applied for a free patent over the parcel of land identified as Lot 10827, Cad-609-D covered by Tax Declaration No. 15-0179 in his name which was granted; that based on the said patent, OCT No. M-5410 was issued in his name; that he was waiving his right over the said lot in favor of his brothers as follows: Jaime Alcantara -  $\frac{1}{2}$  undivided portion; Romulo Alcantara -  $\frac{1}{4}$  undivided portion; and that Ricardo was ready, upon demand, to execute a deed of conveyance over the said portions in favor of his brothers.[19]

Carlita filed a cross-claim against the defendant spouses Ricardo and Teresita alleging that the deed of assignment they executed in her favor was valid. In their answer to the complaint, the defendant spouses alleged that Ricardo was merely a co-owner of the property and that he had executed a waiver in favor of his brothers Jaime and Romulo. Anent Carlita's cross-claim against them, the defendant spouses averred *inter alia* that the deed of assignment was null and void because they were induced through insidious words and machinations, into executing the deed of assignment, and that the same was contrary to law, moral and public policy, being contrary to Section 118, Commonwealth Act 141, as amended.[20]

For her part, Carlita filed a criminal complaint against Alcantara, Tulalian and Bartolata for *estafa* and violations of B.P. Blg. 22 docketed as I.S. 92-612. After the requisite preliminary investigation, an Information was filed with the RTC of Makati, charging Tulalian, Ricardo Alcantara and Jose Bartolata with *estafa* docketed as Criminal Case No. 92-5020, the accusatory portion of which reads:

That on or about the 31st day of October 1990, in the Municipality of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and all of them mutually helping and aiding one another, did then and there willfully, unlawfully and feloniously defraud one CARLITA MARC ANTONIO (*sic*) in the following manner, to wit: The said accused, by means of deceit and false pretenses to the effect that they have the necessary credit, were able to induce the complainant Carlita Marc Antonio into delivering to them the total sum of P3,000,000.00 as loan which they falsely promised to pay within the period of sixty (60) days upon their false manifestations and fraudulent representations that they will use the same in securing US\$2,000,000.00 abroad with which to pay off the said complainant for the P22,000,000.00 value of her house and lot located in Bel-Air, Makati, subject of their deed of conditional sale and upon their further false representation that the said loan and their obligation under said deed of conditional sale were amply secured by three (3) postdated checks issued by Virgilio Tulalian and a deed of assignment executed by accused Ricardo Alcantara over a parcel of land which the said accused

represented to be exclusively owned by him, the said accused fully knowing that their said representations were all false and fraudulent as (1) they did not have any slightest intention from the start to pay said loan; (2) the three (3) checks issued by accused Virgilio Tulalian were not covered by sufficient funds and were, in fact, all dishonored on said ground; and (3) the real property in Binangonan, Rizal was not exclusively owned by accused Ricardo Alcantara but co-owned by him with other persons, to the damage and prejudice of the said complainant Carlita Marc Antonio in the aforestated amount of P3,000,000.00.<sup>[21]</sup>

Three other Informations were filed against Tulalian and Bartolata with the RTC, docketed as Criminal Cases Nos. 92-5021, 92-5022 and 92-5023 for violation of B.P. Blg. 22. The accusatory portion of the three uniformly worded Informations is as follows:

That on or about the 31st day of October 1990, in the Municipality of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously make or draw and issue to CARLITA MARC ANTONIO to apply on account or for value the check described below:

Check No.	:	07034049
Drawn	:	The International Corporate Bank
Against		
In the	:	P3,000,000.00
amount of		
Dated/Posted	:	November 30, 1990
Payable to	:	Carlita Marc Antonio

said accused well knowing that at the time of issue they did not have sufficient funds in or credit with the drawee bank for the payment in full of the face amount of such check upon its presentment, which check when presented for payment within ninety (90) days from the date thereof was subsequently dishonored by the drawee bank for the reason "DRAWN AGAINST INSUFFICIENT FUNDS," and despite receipt of notice of such dishonor, the accused failed to pay said payee the face amount of said check or to make arrangement for full payment thereof within five (5) banking days after receiving notice.<sup>[22]</sup>

Alcantara and Tulalian were arraigned with the assistance of counsel and entered their respective pleas of not guilty to all the charges. However, Jose Bartolata remained at large. A joint trial thereafter ensued.

#### Evidence for the Accused

Alcantara, a retired government dentist, testified that it was only Tulalian and Bartolata who secured the loan in the amount of only P2,000,000 from Carlita.<sup>[23]</sup> He assured Carlita before she delivered the P2,000,000 that he was the owner of the property covered by Original Certificate of Title No. M-5410.

Tulalian testified that, in 1991, Carlita showed him samples of garments to be sold by her to a foreign buyer. He then decided to purchase the garments and sell the