

FIRST DIVISION

[G.R. No. 136221, May 12, 2000]

**EQUATORIAL REALTY DEVELOPMENT, INC., PETITIONER, VS.
MAYFAIR THEATER, INC., RESPONDENT.**

DECISION

PARDO, J.:

Before us is an appeal from the decision^[1] of the Court of Appeals^[2] dismissing the petition for certiorari and prohibition initiated by petitioner and the resolution^[3] modifying the aforementioned decision, thus:

"WHEREFORE, the Decision of this Court of March 24, 1998 is hereby modified, thus-

"1. Mayfair to deposit with the Clerk of Court of Manila the amount of P847,000.00 in addition to the P10,452,500.00 already deposited therein, within ten (10) days from receipt hereof;

"2. The Clerk of Court of Manila, to turn over to petitioner Equatorial the full amount of P11,300,000.00, within ten (10) days from completion of said amount by Mayfair.

"SO ORDERED."^[4]

The facts are as follows:

On November 21, 1996, the Supreme Court promulgated its decision in Equatorial Realty Development, Inc. and Carmelo and Bauermann, Inc. vs. Mayfair Theater, Inc.,^[5] the decretal portion of which reads:

"WHEREFORE, the petition for review of the decision of the Court of Appeals, dated June 23, 1992, in CA-G. R. CV No. 32918, is HEREBY DENIED. The Deed of Absolute Sale between petitioners Equatorial Realty Development, Inc. and Carmelo & Bauermann, Inc. is hereby deemed rescinded; petitioner Carmelo and Bauermann is ordered to return to petitioner Equatorial Realty Development the purchase price. The latter is directed to execute the deeds and documents necessary to return ownership to Carmelo & Bauermann of the disputed lots.

Carmelo & Bauermann is ordered to allow Mayfair Theater, Inc. to buy the lots for P11,300,000.00.

"SO ORDERED."

In due time, Equatorial filed a motion for reconsideration of the above decision. On January 28, 1997, the Court denied the motion with finality. A second motion for reconsideration filed by Equatorial was denied on March 4, 1997. Calr-ky

On March 17, 1997, the decision became final and executory. Equatorial filed a third motion for reconsideration, and on April 22, 1997, the Court noted the same without action since the decision had become final and executory. To stress the finality of the decision, on June 17, 1997, the Court issued a resolution emphasizing its finality and warning the parties that no further pleadings or motions regarding the matter would be entertained.

On April 25, 1997, Mayfair Theater, Inc. (hereinafter Mayfair) filed with the Regional Trial Court, Manila, Branch 07^[6] a motion for execution.

On May 20, 1997, the trial court granted respondent's motion for execution, as follows:

"WHEREFORE, acting on Plaintiff's Motion dated, April 24, 1997, let a Writ of Execution be issued –

"1. ORDERING defendant CARMELO and BAUERMANN, INC. to return within 10 days to Defendant EQUATORIAL REALTY and DEVELOPMENT the amount of P11,300,000.00 the total purchase price of properties covered by:

- a. T.C.T. No. 130410, formerly T.C.T. No. 17350;
- b. T.C.T. No. 130407, formerly T.C.T. No. 118612;
- c. T.C.T. No. 130408, formerly T.C.T. No. 60936; and
- d. T.C.T. No. 130409, formerly T.C.T. No. 52571;

subject of sale date, July 30, 1978 which the Court of Appeals in CA-GR CV No. 32918 ordered rescinded, and to execute another Deed of transfer over said properties in favor of Plaintiff, MAYFAIR THEATER, INC.;

"2. ORDERING MAYFAIR THEATER, INC. to pay Defendant CARMELO BAUERMANN INC. the amount of Eleven Million Three Hundred Thousand Pesos (P11,300,000.00), Philippine Currency upon the latter's execution of such Deed of Transfer;

"3. ORDERING Defendant EQUATORIAL REALTY DEVELOPMENT to accept this Eleven Million Three Hundred Thousand Pesos (P11,300,000.00), Philippine Currency from defendant CARMELO and BAUERMANN, INC. and to execute also in 10 days time "the deeds and documents necessary to return ownership of these properties to CARMELO and BAUERMANN, INC."

"4. ORDERING both Plaintiff and Defendants to submit thereafter their corresponding manifestations of compliance.

"SO ORDERED."^[7]

On the same date, the trial court issued a writ of execution.^[8]

On May 21, 1997, Sheriff IV Manuelito P. Vilorio of the trial court issued to Carmelo and Bauermann a notice to comply with the trial court's order and writ of execution. However, Carmelo did not receive both the writ and notice to comply since it could not be located.

On June 9, 1997, Equatorial filed a motion for reconsideration of the order dated May 20, 1997, the recall and/or quashal of the writ of execution and the notice to comply, on the ground that the order of execution did not conform to the dispositive portion of the Supreme Court's decision dated November 21, 1996. Equatorial specifically averred the following variance:

"a. The ten (10)- day period given by the Court to defendant Carmelo & Bauermann, Inc. (Carmelo, for brevity) within which to return the purchase price to Equatorial, and the same period given to Equatorial to execute the documents necessary to return ownership of the subject properties to Carmelo, do not appear in the dispositive portion of the Supreme Court Decision;

"b. The order of execution makes reference to TCT No. 130410, TCT No. 130407, TCT No. 130408, and TCT No. 130409, which are not mentioned in the Supreme Court Decision;

"c. The order of execution directs defendant Carmelo to execute a deed of transfer over the subject properties in favor of plaintiff, while the Supreme Court decision merely orders Carmelo to allow plaintiff to buy the same for P11,300,000.00;

"d. The order of execution orders plaintiff to pay Carmelo the amount of P11,300,000.00 upon the latter's execution of such deed of transfer, but no such directive appears in the dispositive portion of the Supreme Court Decision;

"e. The order of execution directs Equatorial to accept the amount of P11,300,000.00 from Carmelo, but this directive is not contained in the dispositive portion of the Supreme Court Decision; and

"f. The dispositive portion of the Supreme Court decision refers to 'disputed lots', while the order of execution refers to 'properties'."^[9]

On August 25, 1997, the trial court denied Equatorial's motion for reconsideration, the dispositive portion of the order reads:

"WHEREFORE, the Motion for Reconsideration filed by defendant Equatorial Realty Development, Inc. is hereby denied for lack of merit. Pursuant to Section 10 (a), Rule 39 of the 1997 Rules of Civil Procedure, Acting Clerk of Court, Atty. Jennifer N. dela Cruz-Buendia, who was directed by the Hon. Roberto A. Barrios, Executive Judge to immediately assume and perform the duties and functions of Atty. Jesusa Maningas, Clerk of Court and Ex-Officio Sheriff of the Regional Trial Court of Manila

in view of the latter's indefinite leave of absence, is hereby appointed and directed to execute in behalf of defendant Equatorial Realty and Development, Inc. all the deeds and documents necessary to return ownership of the subject properties to Carmelo & Bauermann, Inc., and thereupon to execute on behalf of defendant Carmelo & Bauermann, Inc. a deed of transfer over the same properties in favor of plaintiff, upon receipt from plaintiff of the purchase price of P11,300,000.00 which the Office of the Clerk of Court shall thereafter hold in trust for defendant Carmelo or its order. All costs incidental to the execution of these conveyances shall be borne by defendants. Finally, the Register of Deeds for the City of Manila is hereby ordered to register the aforementioned deeds and documents of transfer executed by acting Clerk of Court Atty. Jennifer N. dela Cruz-Buendia of the regional Trial Court of Manila upon proof of payment of such fees and taxes as may be due, including documentary stamp and transfer taxes; to cancel in its registry TCT No. 130410, TCT No. 130407, TCT No. 130408 and TCT No. 130409, as well as the owner's duplicates thereof in the possession of defendant Equatorial; and to issue in lieu thereof corresponding new titles and owner's duplicates in the name of plaintiff Mayfair Theater, Inc." [10]

Thereafter, Mayfair deposited with the Clerk of Court, Regional Trial Court, Manila its payment to Carmelo, amounting to P10,452,500.00 (P11,300,000.00 less P847,000.00, as withholding tax). [11]

On August 27, 1997, pursuant to the aforesaid order, the acting clerk of court, Regional Trial Court, Manila executed a deed of re-conveyance of the subject property in favor of Carmelo, and a deed of absolute sale in favor of Mayfair. [12]

On August 28, 1997, both the deed of re-conveyance and deed of absolute sale were submitted to the Register of Deeds of Manila for registration. On the same date, the Register of Deeds of Manila registered the documents, cancelled the transfer certificates of title (TCTs) of Equatorial over the subject property, and issued new TCTs in the name of Mayfair. [13]

On September 5, 1997, Equatorial filed with the trial court an urgent motion for reconsideration of the denial. Equatorial contended that the trial court erred in applying Section 10 (a) of Rule 39 since both Carmelo and Equatorial had not yet failed to comply with the order of execution, hence it was erroneous to designate the acting clerk of court to execute the deed of re-conveyance. In fact, Carmelo had not received the notice to comply. Equatorial maintained that the order of execution should not be implemented because it varied with the Supreme Court's November 21, 1996 decision. Equatorial stressed that since Carmelo had not returned the "purchase price" as ordered by the Court, it could not be compelled to execute the deed of re-conveyance in favor of Carmelo. [14]

On November 6, 1997, the trial court denied the motion for lack of merit. [15]

On December 16, 1997, Equatorial filed with the Court of Appeals, [16] a petition for certiorari and prohibition seeking the annulment of the trial court's orders dated May 20, August 25, and November 6, 1997, the writ of execution dated May 20, 1997,