

THIRD DIVISION

[G.R. No. 119794, October 03, 2000]

**TOMAS SEE TUAZON, PETITIONER, VS. COURT OF APPEALS AND
JOHN SIY LIM, RESPONDENTS.**

DECISION

PURISIMA, J.:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision^[1] of the Court of Appeals in CA G.R. CV No. 40167, which reinstated with modification the Decision dated December 2, 1991 of Branch 131 of the Regional Trial Court of Kalookan City in Civil Case No. C-14542, and reversed the Order^[2] of the court *a quo* granting the Motion for Partial Reconsideration.

The antecedent facts are as follows:

On July 15, 1987, spouses Tomas S. Tuazon and Natividad S. Tuazon sold to John Siy Lim (Lim) a 650 square meter conjugal lot covered by Transfer Certificate Title No. 860,^[3] along A. del Mundo Street, 7th Avenue, Kalookan City, with a two-storey building and Apartment Units Nos. 161 and 163 existing thereon.

Atty. Crisostomo, lawyer of the Tuazons, drafted the Absolute Deed of Sale, which was duly registered. By virtue of the said deed, TCT No. 860 in the name of the Tuazons was cancelled and in lieu thereof, TCT No. 152621 was issued in the name of John Siy F. Lim.

On October 1, 1990, the Tuazons brought a Complaint for Reformation of Contract, Quieting of Title with Damages against John Siy F. Lim, docketed as Civil Case No. C-14542 before Branch 131 of Regional Trial Court of Kalookan City; the Tuazons theorizing that the real intention of the parties was to enter into a loan accommodation.

On November 15, 1990, Lim filed his answer, theorizing that the Deed of Absolute Sale expressed the true intention of the parties.

The case originated from a contract of mortgage constituted on the subject lot. On December 18, 1970, Tomas See Tuazon, who was then the President and General Manager of Universal Rubber Products, Inc., together with the spouses, See Tiong Cheng and Eng Tang Go See, mortgaged, together with other properties, subject lot to the Philippine Bank of Commerce (PBCom),^[4] to secure a loan of Four Million Eight Hundred Thirty Thousand Two Hundred Sixty Five and 90/100 (P4,830,265.90) Pesos. When the mortgagors failed to pay the mortgage debt, the mortgaged property was foreclosed and sold at public auction, with PBCom itself as the highest bidder.

During that time, Lim had amorous relations with Bernice, daughter of the Tuazons, and the two were business partners in Powerstone International. Universal Rubber Products, Inc., where petitioner and his family were majority stockholders, was experiencing business reverses and its workers staged strikes.

Petitioner alleges that:

"2.12 In the first week of June 1987, before the expiration of the 1 year redemption on July 28, 1987, Bernice, the daughter of the appellee, told the appellee that her fiancée, appellant John Lim, was willing to help them redeem the subject property by accommodating them with P1 Million.

2.13 The next day, the appellee met with Bernice and the appellant met in their office below [which Bernice and appellant, as business partners, were renting from appellee] and the appellee proposed that: 60% of the P1 Million, or P600,000 would be a URPI^[5] loan where machineries worth P3 Million, by way of chattel mortgage, would secure it, and 40% of the P1 Million would be appellant's personal loan."^[6]

Petitioner proposed further that, to simplify matters, P20,000.00 of the P400,000.00 would be applied as private respondent's advance rent of the office space he and Bernice were renting, reducing petitioner's personal loan to P380,000.00.^[7] The remaining balance was secured from other persons and petitioner's personal funds.

Consequently, since the loan accommodation was only for One Million (P1,000,000.00) Pesos and the redemption price was P1.1 Million, petitioner negotiated with PBCom to reduce the redemption price to Eight Hundred Eighty Three Thousand (P883,000.00) Pesos but the bank rejected such offer. Upon further negotiations, the bank agreed to reduce the redemption price to One Million (P1,000,000.00) Pesos subject to the condition that petitioner surrendered in favor of PBCom his (petitioner) Producer's Bank stock certificates by way of *dacion en pago*.^[8]

Petitioner then tendered to PBCom the redemption amount of One Million (P1,000,000.00) Pesos and the bank issued a Certificate of Redemption.

To keep the creditors, suppliers and laborers of URPI from levying on subject property, petitioner decided to transfer the title thereof to Lim. The new title was to serve as security for the loan. The Deed of Absolute Sale was executed by petitioner and signed by him and his wife, Natividad Sue Deecho. The consideration of the purported contract of sale executed on July 15, 1987 was Three Hundred Eighty Thousand (P380,000.00) Pesos. By virtue thereof, a new title was issued in private respondent's name but the same was delivered to petitioner. The transfer taxes and capital gains tax were paid by petitioner. Petitioner continued residing in the place.

Thereafter, the relationship between Bernice Tuazon and private respondent began to deteriorate. Sometime in August 1988, after petitioner returned from a trip to the United States, he discovered that the new title and other documents were missing.^[9] When confronted, private respondent refused to return the same. In July 1989, a tenant, William Sze, renewed his lease but this time, with private respondent. Also

in 1989, private respondent began paying real estate taxes and sending demand letters to petitioner. The latter then filed the complaint below for reformation of contract, quieting of title with damages.

The private respondent theorized that:

Petitioner Tuazon and his daughter persuaded him to redeem for himself the extrajudicially foreclosed property from PBCom because Tuazon was financially incapable. The total consideration of the sale was One Million Three Hundred Eighty Thousand (P1,380,000.00) Pesos. He (Lim) purchased a manager's check from Asian Bank for One Million (P1,000,000.00) Pesos and tendered the check to PBCom as the redemption price. On July 16, 1987, Three Hundred Eighty Thousand (P380,000.00) Pesos was paid directly to the Tuazons.^[10] Atty. Crisostomo, Tuazon's counsel, executed an instrument with the nomenclature of a deed of sale^[11] which by its contents, purported to convey the subject property to private respondent.

Meanwhile, private respondent had some misunderstanding with his father so that he temporarily resided with the Tuazons. The relation of Bernice and Lim was souring up until finally, they broke off in July 1989. He (Lim) began documenting and claiming ownership over the property. Because of this, the spouses Tuazon annotated a Notice of *Lis Pendens* dated September 30, 1991 and a Joint Affidavit of Adverse Claim on TCT No. 152621 in the Register of Deeds of Kalookan City.

Due to the harassment perpetuated by the Tuazon, Lim was forced to vacate the premises. He let one William Sze of SK Enterprises lease Apartment No. 161 for Eight Thousand (P8,000.00) Pesos a month. He also allowed Tuazon to lease Apartment 163 conditioned on the payment of Eight Thousand (P8,000.00) Pesos rental a month, for one (1) year or from June 1987 to June 1988.

One year having expired, Lim, through, his counsel demanded that Tuazon vacate the premises and to pay the arrearages. He was constrained to file an ejectment case docketed as Civil Case No. 19668 before Branch 50 of the Municipal Trial Court in Kalookan City when Tuazon deprived him for six (6) long years of his rightful ownership and possession over the subject lot.

On December 2, 1991, the trial court of origin decided for the private respondent, disposing thus:

"WHEREFORE, judgment is hereby rendered dismissing the complaint and declaring the Deed of Absolute Sale executed by the parties on July 15, 1987 as an absolute and unconditional conveyance by the plaintiff in favor of the defendant of the subject property; likewise, defendant's counterclaim is hereby dismissed.

SO ORDERED."^[12]

Dissatisfied therewith, on December 27, 1991, the parties filed their respective Motions for Reconsideration.

On November 16, 1992, the lower court reconsidered its Decision dated December 2, 1991, and resolved instead:

"WHEREFORE, the Decision rendered on December 2, 1991 is accordingly reconsidered, as follows:

(1) The Deed of Absolute Sale, marked as Exhibit `A' for the plaintiff and Exhibit `1' for the defendant, is hereby declared an equitable mortgage and is accordingly reformed as such;

(2) The plaintiff is hereby directed to pay the One Million (P1,000,000.00) Pesos accommodation to the defendant; and

(3) The Transfer Certificate of Title No. 152621 is hereby cancelled, and the former title, Transfer Certificate of Title No. 860 is revived/reinstated subject to those liens appearing therein at the time plaintiff's adverse claim was registered.

SO ORDERED."^[13]

On July 28, 1993, Lim elevated the case to the Court of Appeals. In his appellant's brief, Lim contended that he was not a party to the fraud perpetrated against the Tuazons' creditors, suppliers and laborers, and the principle of *pari delicto*^[14] does not apply, as the Tuazons failed to establish that the transaction between them was actually for an illegal purpose.

In the Appellee's Brief sent in on January 10, 1994, Tuazon reiterated that under Articles 1381(3)^[15] and 1383,^[16] the deed of sale was executed to technically avoid creditor's levies, and thus merely made the contract rescissible, or valid until judicially rescinded and subsidiarily assailed at the instance of the creditor prejudiced thereby. However, since the Deed of Sale was simulated, it was void on that score, and may thus be reformed to conform to the real agreement, under the specific and legal provisions applicable.^[17]

On March 31, 1995, the respondent Court decided in favor of respondent Lim and upheld the validity of the Absolute Deed of Sale, ratiocinating thus:

"WHEREFORE, the appealed Order, dated November 16, 1992, is hereby REVERSED and SET ASIDE, and the original Decision of the trial court, dated December 2, 1991, hereby REINSTATED, with the modification that plaintiff-appellee is ordered to pay defendant-appellant the sum of Five Thousand (P5,000.00) Pesos a month as reasonable rental for the use and occupation of Apartment No. 161 from July 15, 1988 until the premises shall have been vacated and possession thereof peacefully turned over to defendant-appellant.

The counterclaim for attorney's fees of defendant-appellant is DENIED. There is no clear showing that the action taken by plaintiff-appellee was done in bad faith. There should be no penalty on the right to litigate."^[18]

On June 2, 1995, the petitioner found his way to this Court *via* a Petition for Review on *Certiorari*, assigning as errors, that:

First.

THE RESPONDENT COURT ERRED IN HOLDING THE TRANSACTION BETWEEN THE PETITIONER AND THE PRIVATE RESPONDENT TO BE ONE OF ABSOLUTE SALE AND NOT EQUITABLE MORTGAGE.

Second.

THE RESPONDENT COURT ERRED IN HOLDING THE PETITIONER LIABLE TO THE PRIVATE RESPONDENT FOR UNPAID RENTALS.^[19]

Petitioner invites attention and places reliance on the alleged inadequacy of the purchase price and his having remained in possession of subject land.

The petition is not impressed with merit.

It has been held that:

"Article 1602 of the Civil Code provides that a contract shall be presumed to be an equitable mortgage by the presence of any of the following:

`(1) When the price of a sale with right to repurchase is unusually inadequate;

(2) When the vendor remains in possession as lessee or otherwise;

(3) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;

(4) When the purchaser retains for himself a part of the purchase price;

(5) When the vendor binds himself to pay the taxes on the thing sold;

(6) In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation."^[20]

Under Article 1604 of the New Civil Code, the provisions of Article 1602 shall also apply to a contract purporting to be an absolute sale.^[21] And for these provisions of law to apply, two requisites must concur: that the parties entered into a contract denominated as a contract of sale and that their intention was to secure an existing debt by way of mortgage.

While the existence of any of the circumstances in Article 1602, not a concurrence nor an overwhelming number thereof, suffices to give rise to the presumption that the contract is an equitable mortgage,^[22] the present case is entirely different. Records on hand and the documentary evidence introduced by the parties indubitably show no room for construction, Article 1365^[23] of the New Civil Code on