

SECOND DIVISION

[G.R. No. 127347, November 25, 1999]

**ALFREDO N. AGUILA, JR, PETITIONER, VS. HONORABLE COURT
OF APPEALS AND FELICIDAD S. VDA. DE ABROGAR,
RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

This is a petition for review on *certiorari* of the decision^[1] of the Court of Appeals, dated November 29, 1990, which reversed the decision of the Regional Trial Court, Branch 273, Marikina, Metro Manila, dated April 11, 1995. The trial court dismissed the petition for declaration of nullity of a deed of sale filed by private respondent Felicidad S. Vda. de Abrogar against petitioner Alfredo N. Aguila, Jr.

The facts are as follows:

Petitioner is the manager of A.C. Aguila & Sons, Co., a partnership engaged in lending activities. Private respondent and her late husband, Ruben M. Abrogar, were the registered owners of a house and lot, covered by Transfer Certificate of Title No. 195101, in Marikina, Metro Manila. On April 18, 1991, private respondent, with the consent of her late husband, and A.C. Aguila & Sons, Co., represented by petitioner, entered into a Memorandum of Agreement, which provided:

(1) That the SECOND PARTY [A.C. Aguila & Sons, Co.] shall buy the above-described property from the FIRST PARTY [Felicidad S. Vda. de Abrogar], and pursuant to this agreement, a Deed of Absolute Sale shall be executed by the FIRST PARTY conveying the property to the SECOND PARTY for and in consideration of the sum of Two Hundred Thousand Pesos (P200,000.00), Philippine Currency;

(2) The FIRST PARTY is hereby given by the SECOND PARTY the option to repurchase the said property within a period of ninety (90) days from the execution of this memorandum of agreement effective April 18, 1991, for the amount of TWO HUNDRED THIRTY THOUSAND PESOS (P230,000.00);

(3) In the event that the FIRST PARTY fail to exercise her option to repurchase the said property within a period of ninety (90) days, the FIRST PARTY is obliged to deliver peacefully the possession of the property to the SECOND PARTY within fifteen (15) days after the expiration of the said 90 day grace period;

(4) During the said grace period, the FIRST PARTY obliges herself not to file any lis pendens or whatever claims on the property nor shall be cause

the annotation of say claim at the back of the title to the said property;

(5) With the execution of the deed of absolute sale, the FIRST PARTY warrants her ownership of the property and shall defend the rights of the SECOND PARTY against any party whom may have any interests over the property;

(6) All expenses for documentation and other incidental expenses shall be for the account of the FIRST PARTY;

(7) Should the FIRST PARTY fail to deliver peaceful possession of the property to the SECOND PARTY after the expiration of the 15-day grace period given in paragraph 3 above, the FIRST PARTY shall pay an amount equivalent to Five Percent of the principal amount of TWO HUNDRED PESOS (P200.00) or P10,000.00 per month of delay as and for rentals and liquidated damages;

(8) Should the FIRST PARTY fail to exercise her option to repurchase the property within ninety (90) days period above-mentioned, this memorandum of agreement shall be deemed cancelled and the Deed of Absolute Sale, executed by the parties shall be the final contract considered as entered between the parties and the SECOND PARTY shall proceed to transfer ownership of the property above described to its name free from lines and encumbrances.^[2]

On the same day, April 18, 1991, the parties likewise executed a deed of absolute sale,^[3] dated June 11, 1991, wherein private respondent, with the consent of her late husband, sold the subject property to A.C. Aguila & Sons, Co., represented by petitioner, for P200,000.00. In a special power of attorney dated the same day, April 18, 1991, private respondent authorized petitioner to cause the cancellation of TCT No. 195101 and the issuance of a new certificate of title in the name of A.C. Aguila and Sons, Co., in the event she failed to redeem the subject property as provided in the Memorandum of Agreement.^[4]

Private respondent failed to redeem the property within the 90-day period as provided in the Memorandum of Agreement. Hence, pursuant to the special power of attorney mentioned above, petitioner caused the cancellation of TCT No. 195101 and the issuance of a new certificate of title in the name of A.C. Aguila and Sons, Co.^[5]

Private respondent then received a letter dated August 10, 1991 from Atty. Lamberto C. Nanquil, counsel for A.C. Aguila & Sons, Co., demanding that she vacate the premises within 15 days after receipt of the letter and surrender its possession peacefully to A.C. Aguila & Sons, Co. Otherwise, the latter would bring the appropriate action in court.^[6]

Upon the refusal of private respondent to vacate the subject premises, A.C. Aguila & Sons, Co. filed an ejectment case against her in the Metropolitan Trial Court, Branch 76, Marikina, Metro Manila. In a decision, dated April 3, 1992, the Metropolitan Trial Court ruled in favor of A.C. Aguila & Sons, Co. on the ground that private respondent did not redeem the subject property before the expiration of the 90-day

period provided in the Memorandum of Agreement. Private respondent appealed first to the Regional Trial Court, Branch 163, Pasig, Metro Manila, then to the Court of Appeals, and later to this Court, but she lost in all the cases.

Private respondent then filed a petition for declaration of nullity of a deed of sale with the Regional Trial Court, Branch 273, Marikina, Metro Manila on December 4, 1993. She alleged that the signature of her husband on the deed of sale was a forgery because he was already dead when the deed was supposed to have been executed on June 11, 1991.

It appears, however, that private respondent had filed a criminal complaint for falsification against petitioner with the Office of the Prosecutor of Quezon City which was dismissed in a resolution, dated February 14, 1994.

On April 11, 1995, Branch 273 of RTC-Marikina rendered its decision:

Plaintiff's claim therefore that the Deed of Absolute Sale is a forgery because they could not personally appear before Notary Public Lamberto C. Nanquil on June 11, 1991 because her husband, Ruben Abrogar, died on May 8, 1991 or one month and 2 days before the execution of the Deed of Absolute Sale, while the plaintiff was still in the Quezon City Medical Center recuperating from wounds which she suffered at the same vehicular accident on May 8, 1991, cannot be sustained. The Court is convinced that the three required documents, to wit: the Memorandum of Agreement, the Special Power of Attorney, and the Deed of Absolute Sale were all signed by the parties on the same date on April 18, 1991. It is a common and accepted business practice of those engaged in money lending to prepare an undated absolute deed of sale in loans of money secured by real estate for various reasons, foremost of which is the evasion of taxes and surcharges. The plaintiff never questioned receiving the sum of P200,000.00 representing her loan from the defendant. Common sense dictates that an established lending and realty firm like the Aguila & Sons, Co. would not part with P200,000.00 to the Abrogar spouses, who are virtual strangers to it, without the simultaneous accomplishment and signing of all the required documents, more particularly the Deed of Absolute Sale, to protect its interest.

. . . .

WHEREFORE, foregoing premises considered, the case in caption is hereby ORDERED DISMISSED, with costs against the plaintiff.

On appeal, the Court of Appeals reversed. It held:

The facts and evidence show that the transaction between plaintiff-appellant and defendant-appellee is indubitably an equitable mortgage. Article 1602 of the New Civil Code finds strong application in the case at bar in the light of the following circumstances.

First: The purchase price for the alleged sale with right to repurchase is unusually inadequate. The property is a two hundred forty (240) sq. m. lot. On said lot, the residential house of plaintiff-appellant stands. The property is inside a subdivision/village. The property is situated in